UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BESSYE NEAL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action 93-2420 (RCL)
	)	
DIRECTOR, D.C. DEPARTMENT OF CORRECTIONS, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION

Before the Court is a joint motion for final approval of the consent decree proposed by the parties to settle this class action lawsuit. Upon consideration of the positions of class counsel and the defendants, and after particular attention to the objections and comments submitted by claimants, class members, named plaintiffs, and other affected persons, the Court finds that the proposed consent decree is fair, adequate, and reasonable. Therefore, the Court will grant final approval of the consent decree.

I. BACKGROUND

A. Introduction

Any evaluation of this proposed consent decree must begin with the reality of sexual harassment at the District of Columbia Department of Corrections (DCDC or Department) over the last

three decades.[1] In this case alone, the allegations of the plaintiff class members have detailed a persistent and pervasive culture of implicit and explicit quid pro quo sexual harassment, as well as a work environment as sexually hostile as one can imagine. Claimants have alleged (and, in many cases, the Court's Special Master has confirmed) instances of coerced sexual relationships ending in unintended pregnancies, sexual assault, unwanted grabbing, rubbing, and other sexual touching, and what seems a constant stream of sexually suggestive and sometimes abusive comments.[2] Plaintiffs' allegations implicate not just a

[1]Although the Court will not recount the facts in detail, it is significant to note that, during the time period covered by this class action, the DCDC was subject to a court order prohibiting sexual harassment at the Department. See Bundy v. Jackson, 641 F.2d 934 (D.C. Cir. 1981); Bundy v. Jackson, 1981 WL 146 (D.D.C. 1981) (injunctive order, on remand).

[2]It seems that one specific is worth a thousand generalities in conveying the gravity of the sexual harassment endured by some female employees at the DCDC during the time period covered by this class action. While the Court is not inclined to reprint all of the often explicit allegations made in this case, a few examples from the testimony offered at trial in 1995 illustrate the level of the more severe harassment then occurring at the Department.

For instance, evidence was taken regarding the sexual harassment of one claimant by a supervisor. The supervisor repeatedly invited claimant to have sex with him, and offered to change her days off if she did. He asked her if she enjoyed oral sex. He often made sexual comments to her such as "Your breasts look perky today." On one occasion the supervisor ran his hand down her breast, and she pushed him away. He offered to change her leave or give her other preferential treatment if she would agree to have sex with him. She consistently refused; the supervisor told her that he did not believe that women meant no when they resisted sexual advances. When claimant was later terminated, the supervisor told her that she would not be in that situation had she complied with his demands.

discrete employee or group of employees, but officers throughout the Department including the very highest levels.

Moreover, sexual harassment is only half of the story. Hand in hand with the growth and spread of sexual harassment at the DCDC has come a crescendo of retaliation against those employees who opposed sexual harassment at the Department. Employees, male and female, who opposed the harassment (and the Department's condonation of it) were variously subjected to transfers to unfavorable and occasionally dangerous assignments, false disciplinary charges, and constructive and outright terminations. In addition to the retaliatory employment actions, an atmosphere of violence and threatened violence seems to have underlain the

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Another claimant testified that she was harassed over the course of nearly a year by another officer. For months he would put his arms around her and whisper in her ear and make other sexual advances, which claimant rejected. After several months, the harasser became the supervisor of claimant's husband and threatened to make things difficult for him if claimant refused his advances. Finally, the harasser forced claimant to meet him at a hotel where he verbally abused her and threatened her and her husband. He eventually raped her.

Unfortunately, a number of plaintiffs presented scenarios more or less similar to these, including supervisors explicitly saying that sex was required to gain promotions or favorable assignments at the Department. Also, much of the abuse involved comments so sexually explicit and abusive that they need not be reproduced here.

It should be said, in the interest of clarity and accuracy, that not all or even most of the sexual harassment at the DCDC during the relevant time period was as overt or severe as that depicted above. In fact, there appears to have existed an entire spectrum from this kind of harassment to relatively less severe unwanted advances and nonsexual touching. It is, however, important that the seriousness of the situation at the DCDC be recognized expressly by the Court.

Department's harassment. Plaintiffs allege incidents ranging from one-on-one physical confrontation to threatening phone calls to vandalism and destruction of property.[3]

B. Procedural History

In November of 1993, Sharon Bonds filed this action against the DCDC and the District of Columbia seeking monetary and injunctive relief for violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq., and 42 U.S.C. § 1983. In January of 1994, named plaintiffs Bessye Neal, Sharon Bonds, Vera Brummell, Barbara Carter, Essie Jones, Shivawn Newsome, Tyrone Posey, and Teresa Washington filed the First Amended Complaint and sought certification of a class action. Plaintiffs alleged a pattern and practice and an unwritten custom or policy of sexual harassment and retaliation by the defendants, where such practices had flourished despite a prior injunction issued by the Court to end these practices.[4] The goals of the plaintiff class were to enforce the existing injunction and obtain further injunctive relief, and also to obtain a measure of justice in the form of monetary damages for individuals who had been harmed by the pattern and practice of sexual harassment and

[3]Again to give a specific example, as stated at the fairness hearing, the retaliation against class representative Bessye Neal ranged from the denial of worker compensation to the breaking and entering of her home and threats of rape.

[4]See supra note 1.

retaliation at the Department.

On December 23, 1994, this Court granted Plaintiffs' motion for class certification. The class certified by the Court was defined as:

a. all current and former female employees who have been employed by the D.C. Department of Corrections between April 1, 1989 and the date of trial and who were adversely affected by the practices of sexual harassment; and

b. all current and former female and male employees who have been employed by the D.C. Department of Corrections between April 4, 1991 and the date of trial and who have suffered retaliation for opposing sexual harassment.

Following a long string of discovery misconduct by defendants, the Court found that the defendants had utterly failed to respond to an interrogatory propounded by plaintiffs concerning the identity of persons with knowledge regarding the matters alleged in the complaint, despite an extension of time that explicitly warned the defendants of the consequences of a failure to respond. As a discovery sanction, the Court barred defendants from calling at trial any fact witnesses.

A jury trial commenced on March 1, 1995, which resulted in a judgment and verdict for the plaintiff class and for seven of the eight named plaintiffs. A final judgment was entered on August

9, 1995. See Neal v. D.C. Dept. of Corrections, Civ. No. 93-2420, 1995 WL 517244, 517246, 517248, 517249 (D.D.C. Aug. 9, 1995). The jury awarded compensatory damages to six of the eight named plaintiffs, and the Court granted back and front pay and other equitable relief to seven of the eight named plaintiffs.[5] Further, the Court granted class-wide injunctive relief.

Defendants appealed the final judgment and, on August 23, 1996, the United States Court of Appeals for the District of Columbia Circuit ruled that the discovery sanction was overly harsh. The Court of Appeals vacated the judgment and remanded the case for a new trial. See Bonds, et al. v. District of Columbia, et al., 93 F.3d 801 (D.C. Cir. 1996). Plaintiffs' petition for certiorari was denied by the United States Supreme Court. After several months of additional discovery, a second trial was scheduled to begin in August of 1997.

Beginning in approximately November of 1996, the parties began to discuss settlement of this class action. The parties engaged in protracted negotiations that lasted approximately nine months before a preliminary settlement was reached. The negotiations between the parties were at arms length and vigorous. Much of the negotiations were mediated by two experienced practitioners who were appointed by the Court.

[5]Plaintiff Sharon Bonds was limited to equitable relief such as lost wages, because her claim arose prior to the Civil Rights Act of 1991, which permitted plaintiffs to pursue compensatory damages. Plaintiff Essie Jones did not prevail on her claim.

During the negotiations, class counsel for the plaintiffs consulted with the named plaintiffs and circulated drafts of the proposed agreement at various stages. Each of the named plaintiffs attended at least one of the mediation sessions.

The parties assert several factors that class counsel reasonably relied upon in deciding to recommend the settlement to the Court in August of 1997:

1. A substantial portion of the evidence had become dated in August of 1997, over two years after the first trial of this matter;
2. A plan was being formed to transfer control of the Department to the United States and to close several of the prison facilities, which could have affected the availability of injunctive relief;
3. The District of Columbia was suffering from severe financial difficulties and a lack of resources;
4. The parties wished to avoid the expense, delay, and inconvenience of further litigation; and
5. Many named plaintiffs and class members, for their own mental and physical health, wished to bring closure to the matter and to start the healing process after many years of suffering from the pattern and practice of sexual harassment and retaliation at the Department.

Overall, class counsel concluded that the terms of the settlement were and are favorable to the plaintiff class as a

whole, including the named plaintiffs. Class counsel asserts that the settlement satisfies the dual goals that the plaintiffs set out to accomplish when they filed this action, by providing important injunctive relief as well as significant amounts in monetary damages. In August of 1997, the parties presented the proposed consent decree to the Court for preliminary approval, which the Court granted on August 28, 1997.

Following preliminary approval of the consent decree, the claims process began under the direction of the court-appointed Special Master.[6] All potential class members were notified that, in order to recover for any claims arising during the covered time period, they were required to submit a completed claim form to the Special Master by October 20, 1997. The Special Master then conducted a nonadversarial personal interview with each claimant, of approximately one half hour in length, at which the claimant had the opportunity to clarify and comment on the information submitted in his or her claim form; this interview process lasted until approximately June of 1998. During the subsequent several months, the Special Master investigated and evaluated the submitted claims in accordance with an innovative allocation method developed by him after a review of procedures used in other class actions, as well as consultation with

[6]This was in fact the second round of claims in this case. Initial claims were filed following trial in 1995, covering all unlawful conduct occurring between the opening of the covered time period and March 1, 1995.

accounting experts and experienced labor lawyers. The Recommendations of the Special Master Concerning Monetary and Equitable Relief, including a detailed Allocation of Relief, were filed on December 22, 1998.

After further consultation with the parties, and with the work of the Special Master having neared completion, the Court on January 8, 1999 issued a Notice and Order Regarding Hearing on the Fairness of the Settlement, setting forth procedures for the lodging of comments on and objections to the proposed consent decree, including the Special Master's Recommendations and Allocation of Relief. On February 22, 1999, the Court held a day-long fairness hearing at which class members and a number of other individuals spoke in favor of or against the proposed consent decree. Those comments and objections will be dealt with in detail below.

C. Proposed Consent Decree

A brief summary of the terms of the proposed consent decree goes far, in the Court's determination, toward establishing that the settlement is fair, adequate, and reasonable.

1. Monetary Relief

The proposed consent decree provides for the payment of $8 million, together with all interest earned due to the early payment of the $8 million into an escrow fund, for settlement of

"all claims of sexual harassment against the District, its agents or employees that were brought or which could have been brought under any theory of liability for such claims by all female employees of the Department between April 1, 1989 and July 22, 1997," and for "all claims of retaliation for opposing sexual harassment against the District, its agents or employees that were brought or which could have been brought under any theory of liability for such claims by all employees of the Department between April 4, 1991 and July 22, 1997." Consent Decree at IV.A. The monetary relief is divided into three segments covering: attorneys' fees and costs, named plaintiffs, and class members. As set forth in Section IV.D.1 of the consent decree, the money will be divided as follows:

a. the eight named plaintiffs will receive $1,618,000;

b. 130 persons found by the Special Master to be class members will receive $4,350,000 plus all interest earned on the $8 million. The total interest earned to date is approximately $500,000. Thus, the total amount of money available to the class members is $4,850,000;

c. attorneys' fees and costs account for $2,032,000.

The individual allocations for the named plaintiffs are set forth in the consent decree. As to the individual claimants, the Recommendations of the Special Master Concerning Monetary and Equitable Relief (including the Allocation of Relief) states the various awards.

2. Equitable Relief

The class-wide injunctive relief set forth in section II of the consent decree is substantially similar to the relief that was ordered by this Court in August of 1995, following a trial and post-trial briefing from the parties. The consent decree establishes an independent, court-appointed Office of the Special Inspector within the DCDC. Under the settlement agreement, the authority that would ordinarily be vested in the Director of the Department regarding sexual harassment and retaliation will be vested in the Special Inspector (SI). This independent office is a central feature of the proposed settlement, because the Department has repeatedly failed to comply on its own with court orders and the laws prohibiting sexual harassment and related retaliation. The consent decree calls for the SI position to be filled by Alan Balaran, currently the court-appointed Special Master, if he should choose to accept it; if he does not, the position will be filled by agreement of the parties or, if the parties cannot agree, by the Court.

The scope of the injunctive relief is substantial, greater even than court-ordered relief in many cases, and will establish a “cutting-edge system” within the Department. Pursuant to the consent decree, the SI will have virtually identical authority as he would have had under the previous court orders. The SI will hire or contract with his own staff to conduct investigations and

carry on other work of the office, thus establishing the necessary independence and permitting him to bring in people with the required expertise. The SI and his investigators will investigate all complaints of sexual harassment and retaliation for opposing sexual harassment in the Department of Corrections; the SI will issue findings; and the SI's office will have authority to discipline employees found to have engaged in sexual harassment or retaliation. The SI will also have authority to provide relief such as corrective personnel actions and back pay to prevailing complainants. Although the Office of the Special Inspector will be part of the District of Columbia government and will function within the ordinary budgetary parameters of that government, the consent decree aims to ensure that the SI will have the necessary funds to support this important work and maintain its independent status. The proposed consent decree also provides that if there is any disagreement between the SI and the District regarding budget or other perquisites of the office, this Court shall rule on the issue.

Pursuant to the consent decree, the SI will develop new policies and procedures related to sexual harassment for the Department. The SI will design a sexual harassment training program, select the materials to be used and instructors for training, and supervise the training, ensuring that proper records are kept of who receives training. The consent decree

also provides for the creation of an Ombudsperson position,[7] the establishment of a sexual harassment advisory committee, and a hotline, all of which were elements of the August 1995 order of this court.

Finally, as amended on January 8, 1999, the consent decree provides that, upon final approval, all preliminary injunctive relief awarded to individuals by the Court shall become permanent relief as to the underlying claim addressed by the preliminary injunction.

In the Court's opinion, the breadth and depth of this equitable relief weighs heavily in favor of a finding that the proposed consent decree is fair, adequate, and reasonable. While the Court is keenly aware of the inherent limitations of monetary relief in compensating the victims of sexual harassment and retaliation, the Court finds that the objectives of the class plaintiffs are substantially met by the equitable relief, which in this Court's estimation offers the best hope yet of a real change in the DCDC's handling of sexual harassment issues.

D. Special Master's Recommendation Regarding Monetary and Equitable Relief

The Recommendations of the Special Master Concerning Monetary and Equitable Relief was filed with the Court on

[7]Under the terms of the consent decree, the first Ombudsperson will be Bessye Neal.

December 22, 1998, setting forth in some detail the Special Master's findings and recommendations for awards under the consent decree. An Amended Allocation of Relief was filed May 21, 1999, in which were incorporated several revisions made after the Special Master reviewed the comments and objections submitted to the Court.[8] Although the Court will not repeat all of the information contained in the Special Master's recommendations, a brief summary is helpful in understanding the full range of relief provided by the settlement agreement.

Nearly 250 individuals presented claims to the Special Master. Of those, the Special Master denied relief to over one hundred claimants, for reasons ranging from allegations of conduct occurring outside the covered time period to failure to adequately document their claims of sexual harassment or retaliation. See Amended Allocation of Relief, tab. 4.

The Special Master recommended monetary awards to 130 claimants. The smallest total award was less than $2,000; the largest total award was over $200,000; and the average total award was just over $35,000.[9] See id. tab. 16. Broken down into

[8]The Recommendations of the Special Master Concerning Monetary and Equitable Relief are attached to this memorandum opinion as Appendix A. Portions of the Amended Allocation of Relief are attached as Appendices B (Total Award To Each Claimant In Order By Claimant) and C (Calculation of Sexual Harassment Scores In Order By Claimant's Score).

[9]The Court does not include exact dollar values here, because the values will continue to increase slightly as interest continues to accrue on the $8 million dollars originally

categories, sexual harassment awards ranged from less than $800 to almost $130,000; retaliation awards ranged from approximately $1,600 to over $100,000; and financial loss awards ranged from under $80 to over $130,000. See id. tab. 17.

The Special Master also recommended numerous equitable awards, pursuant to section V.B of the consent decree. Nine individuals will be promoted. Seven people will be rehired. One individual will be rehired and promoted. See id. tab. 2. In addition, the Special Master has decided that the files of nearly seventy individuals shall be purged of disciplinary actions. See id. tab. 3.

One final feature of the Special Master's authority under the consent decree should be explained. The Special Master has served a dual role in this litigation. The first aspect of the Special Master's duties stems from the injunctions entered by this Court in March and June of 1995 and February of 1996, which listed a number of persons who would be "protected" from retaliation by requiring that the defendants preclear any employment actions concerning them with the Special Master before acting. Pursuant to this authority, the Special Master has interceded on behalf of many individuals to ensure that employment actions proposed by the Department were legitimate,

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deposited in escrow by the defendants. Each individual's award is calculated as a percentage of the settlement fund; consequently, as the fund grows so will each of the individual awards grow very slightly.

and to rectify improper actions. The Special Master took such action, in accordance with the terms of the injunction, because the individuals at issue were "protected persons," without regard to whether the employment action at issue was shown to be retaliation for opposing sexual harassment of female employees.

The second aspect of the Special Master's duties, and the one most squarely at issue today, stems from the proposed consent decree itself. Sections IV.E and V.B of the consent decree authorize the Special Master to allocate the monetary relief provided for in the settlement and to award limited nonmonetary equitable relief to claimants, respectively. These provisions provide the authority for the Special Master's Recommendations Concerning Monetary and Equitable Relief described above and discussed in more detail below as they relate to particular individuals. The Special Master's authority in allocating relief under the consent decree is limited to compensating claimants who establish claims of sexual harassment (of female employees only) or retaliation for opposing the sexual harassment of female employees, along with claims of financial loss associated with such harassment and retaliation.

It must be clearly noted that the two authorities of the Special Master are not coextensive. The Special Master's actions under the first aspect have been based entirely on an individual's "protected" status, without regard to whether the particular employment action being challenged was shown to in

fact be retaliation for opposition to sexual harassment. On the other hand, the Special Master's allocation of relief under the consent decree is based entirely on whether a claimant has demonstrated sexual harassment or retaliation for opposing sexual harassment, without regard to whether the person was included on the "protected list" created by this Court's injunctions. This subtle distinction has led to some confusion among class members, some of whom have been protected by the Special Master in his implementation of the injunction and were then surprised when the Special Master recommended that they not receive an award under the consent decree. It is clear, however, that the Special Master's interpretation of his dual authority is correct; while the two aspects of his authority practically overlap in some instances, they are not coextensive, and relief under one does not lead necessarily to relief under the other.

E. Attorneys' Fees

As a final factual matter, the Court will briefly address the attorneys' fees provided for in the settlement agreement. The consent decree provides for $2,320,000 in attorneys' fees to be paid to class counsel. Some class members have expressed a concern that these fees may have provided an improper impetus for class counsel to settle this action. However, while $2,032,000 is a substantial sum of money, the attorneys for the plaintiff class will in fact receive fees well below their ordinary billing

rates, simply because of the tremendous number of hours worked on this case by a large number of lawyers. By way of illustration, the parties informed the Court at the time they requested preliminary approval of the consent decree in August of 1997 that the $2,032,000 provided in the consent decree represented substantially less than fifty percent of the legal fees actually billed by class counsel and the various attorneys representing individuals. Since that time, attorneys for the plaintiff class have accrued hundreds more hours in representing individual class members, as well as in connection with the fairness hearing held in February of this year; despite this additional legal work, there has been no increase in the amount of attorneys' fees provided for in the consent decree. Thus, the Court believes (and plaintiff class members should be aware) that class counsel stand to gain less financially from this settlement than from a trial, where a verdict in favor of the plaintiff class would likely result in a statutory award of attorneys' fees more closely in line with the fees actually billed. Any perception of a financial motivation for class counsel to settle this class action is, therefore, a misperception.

II. LAW AND APPLICATION

The narrow legal issue currently before the Court is whether or not to grant final approval to the proposed consent decree. The Court is well aware of the sensitivity and importance of the

Court's supervisory role in this context. Unlike the settlement of ordinary civil actions, plaintiffs in class actions often have relatively little voice in settlement negotiations. See generally G. Donald Puckett, Note, Peering into a Black Box: Discovery and Adequate Attorney Representation for Class Action Settlements, 77 Tex. L. Rev. 1271 (1999). In large class actions, the best that the class can hope for is usually participation in settlement negotiations by the named plaintiffs. The better part of the initiative and compromise behind the negotiations, however, inevitably lies with class counsel. See id.

In light of this situation, the law provides that a district court shall not approve a settlement in the class action context absent a finding that the settlement as a whole is "fair, adequate, and reasonable." See, e.g., Thomas v. Albright, 139 F.3d 227, 231 (D.C. Cir. 1998). As the Court of Appeals has recently explained, "[t]he court's primary task is to evaluate the terms of the settlement in relation to the strength of the plaintiffs' case. The court should not reject a settlement merely because individual class members complain that they would have received more had they prevailed after a trial." Id. (citation omitted). Likewise, it is the court's duty to evaluate the proposed settlement with a view toward protecting the interests of the class as a whole. While the positions and interests of individual plaintiffs, named and unnamed, are a

central consideration in the court's determination, a settlement that is fair, adequate, and reasonable for the class as a whole should be approved even though a substantial number of class members may object. See id. at 232; Maywalt v. Parker & Parsley Petroleum Co., 67 F.3d 1072, 1074 (2d Cir. 1995); Reed v. General Motors Corp., 703 F.2d 170 (5th Cir. 1983).

It is with this legal standard in mind that the Court approaches the question of whether to grant final approval to the proposed consent decree. As an initial matter, the Court finds that the combination of over $8 million dollars in monetary relief and the broad and progressive equitable relief agreed to by the parties weighs heavily in favor of approval. This inclination is further supported by the ground-breaking and impressive method established by the Special Master for allocation of the monetary relief among the individual claimants, a method which this Court believes will be adopted in the future by other courts facing the formidable challenge of allocating settlement funds to a large number of claimants in employment discrimination cases.

Despite the many positive aspects of the proposed consent decree, however, a number of class members and other individuals exercised their right to lodge comments on and objections to the proposed consent decree before the February 22, 1999 fairness hearing and in person at the hearing itself. The vast majority of those comments were directed at individual allocation

recommendations made by the Special Master, rather than objections to the settlement in general, although the Court did receive and hear several global objections which will be addressed below. Many of the objections received reflect misunderstandings of the Special Master's allocation method or of the definition of the plaintiff class. In other instances, legitimate objections to individual allocations have resulted in revisions by the Special Master.

Before addressing each individual objection, it is relevant to note that the proposed consent decree contains a fairly typical nonseverability clause providing that, if the agreement is not approved in its entirety, it will be null and void. See Consent Decree at VI.I. Therefore, should the Court find a flaw or inconsistency in the settlement agreement, it has just two options: (1) approve the consent decree despite the flaw or inconsistency, or (2) disapprove the agreement in whole, invalidating all those positive and proper provisions along with any flawed or inconsistent provision.

In this regard, each individual comment or objection carries its own weight, and if it raises a flaw in the settlement so egregious as to render the agreement unfair, inadequate, or unreasonable, then the Court must and will disapprove the entire proposed consent decree. At the same time, each comment or objection's weight, even if insufficient in isolation to render the settlement unapprovable, must be considered in its cumulative

aspect; if the Court finds the total weight of all submitted comments and objections to render the settlement agreement unfair, inadequate, or unreasonable, then the Court must and will disapprove the consent decree. That said, the Court will turn to an examination of the various general and particular comments and objections submitted for its consideration.

A. Comments and Objections of Named Plaintiffs

Four of the eight named plaintiffs in this class action (Sharon Bonds, Essie Jones, Tyrone Posey, and Teresa Washington) have objected to the proposed consent decree. While it is well settled that the objections of several or even a majority of named plaintiffs does not prohibit a court from approving a consent decree, see, e.g., Maywalt, 67 F.3d at 1074, such objections clearly warrant careful consideration before a decision on approval or disapproval is made.

1. General Comments and Objections

The objecting named plaintiffs' first objection is to the consent decree's proposed allocation of monetary relief among the named plaintiffs. By agreement of the parties, the consent decree distributes the $1,618,000 allocated to the named plaintiffs in proportion to the awards received by the named plaintiffs at trial in 1995. The objecting named plaintiffs correctly point out that the vacated 1995 judgment has no

precedential value. However, the 1995 awards were made by juries after full trials on liability and damages. The Court cannot say that the parties were unreasonable in their conclusion that the awards from the 1995 trial provide a more equitable basis for distribution of the funds allocated to the named plaintiffs than a rigid pro rata division. In any event, the primary concern is that the parties agreed to such distribution of relief, and to that extent the distribution is on equal footing with any other that the parties might agree to. The simple fact that it reflects an earlier jury verdict which was subsequently vacated does not render the parties' otherwise reasonable agreement less reasonable.

At the fairness hearing, named plaintiffs Shirley Jones and Theresa Washington both expressed the related objection that the $8 million provided for in the settlement agreement was simply insufficient to compensate the victims. The Court, however, finds that the monetary relief is reasonable when viewed in conjunction with the broad equitable relief provided for in the consent decree.

In conjunction with their objection to the allocation of monetary relief among the named plaintiffs, the objecting named plaintiffs argue that, should the Court reject their objection, they should be permitted to opt out of the class action and pursue their claims in a separate action. The Court, however, has already addressed the issue of opt-outs in this litigation.

See Robinson v. Williams, Civil Action 96-555 (Jan. 27, 1999); Bostick v. Moore, Civil Action 98-2177 (Jan. 27, 1999). Like the plaintiffs in those two cases, the objecting named plaintiffs have failed to show that their claims are unique or sufficiently distinct from the claims of the class as a whole to warrant an opt-out from this Rule 23(b)(2) class action. Therefore, the objecting named plaintiffs will not be authorized to opt out of the action.

The objecting named plaintiffs' final general objection is that class counsel had a potential conflict of interest in representing class members who objected to the proposed settlement as well as class members who supported it. The Court agrees with class counsel, however, that this objection reflects a misunderstanding of the role and duties of class counsel. As the United States Court of Appeals for the Second Circuit has correctly noted:

> Class counsel's duty to the class as a whole frequently diverges from the opinion of either the named plaintiffs or other objectors. . . . [T]he compelling obligation of class counsel in class action litigation is to the group which makes up the class. . . . To that end, Class Counsel must act in a way which best represents the interests of the entire class and is not dependent on the special desires of the named plaintiffs.

Maywalt, 67 F.3d at 1076 (quoting Maywalt .v Parker & Parsley Petroleum Co., 155 F.R.D. 494, 496 (S.D.N.Y. 1994) (internal

citations omitted)); see also Kincade v. General Tire & Rubber Co., 635 F.2d 501, 508 (5th Cir. 1981) (noting that "'client' in a class action consists of numerous unnamed class members as well as the class representatives" and that this can force class counsel to "act in what she or he perceives to be in the best interests of the class as a whole" (internal citation omitted)). While the objections of some plaintiffs to a proposed settlement advocated by class counsel is a consideration for the court in deciding whether to approve the settlement, the conflicting wishes of class members need not constitute a disqualifying conflict of interest for class counsel, whose primary obligations are to the class as a whole.

In contraposition to the foregoing objections, named plaintiff Bessye Neal spoke forecfully and eloquently at the fairness hearing in favor of the consent decree, urging the Court to grant final approval. Although Ms. Neal stated that retaliation at the Department continues to be a problem, and that the consent decree is imperfect, she stated her belief that the consent decree (and particularly the equitable relief that it provides) will establish the framework for positive change at DCDC. The Court agrees.

Named plaintiff Vera Brummell also submitted a comment asking that the Court approve the settlement, stating that the goals and purposes of the class action had been addressed. At

the fairness hearing, she asked the Court to carefully consider all objections raised, and then to approve the settlement. Today's ruling will satisfy both of those requests.

2. Individual Comments and Objections

In addition to their collective general objections, two of the objecting named plaintiffs raised individual objections to the proposed consent decree.

Tyrone Posey objected to a particular provision of the consent decree, arguing that 524 hours of "absent without leave" (AWOL) charges against him should be compensated (as provided in the 1995 judgment following trial) rather than merely credited toward his time in grade, because he has now retired from the DCDC. At the fairness hearing, counsel for Mr. Posey represented that the defendants had agreed to compensate Mr. Posey for the 524 hours, as he requested.

Plaintiff Teresa Washington objected to the consent decree's failure to award her the equitable relief granted by this Court following the 1995 trial. In particular, she objects to the consent decree's failure to provide for the accrual of benefits while she continues on "leave without pay" (LWOP) status. While the Court does not find plaintiff Washington's request to be unreasonable, neither does the Court find that its omission from the consent decree renders that document unfair. The proposed consent decree, like any settlement agreement, reflects a

compromise position between the parties in this case. The failure of class counsel to secure a particular provision cannot be seen to undermine the agreement in general.[10]

The Court finds that the objections raised by the objecting named plaintiffs do not uncover any fatal flaw in the settlement agreement embodied in the proposed consent decree. While the Court will consider each objection both individually and in cumulation with the comments and objections discussed below, the Court finds that in neither light do the objecting named plaintiff's comments and objections require a rejection of the consent decree. This position is fortified by the support for the consent decree exhibited by the other four named plaintiffs, most vocally Bessye Neal.

B. Objections of Individual Class Members and Other Individuals

1. General Objections

Of the more than sixty sets of comments and objections

[10]Counsel for Ms. Washington noted at the fairness hearing that the opening sentence of section V.A. of the consent decree provides that the named plaintiffs "will receive the non-monetary relief which was awarded them by the Court in Final Judgment and Order II." The more specific provision dealing with Ms. Washington's equitable relief, however, differs slightly from the relief awarded by the Court in 1995. The Court finds that the more specific provisions of section V.A.6 must control, absent some indication from the parties that the more specific articulation was in error.

submitted for the Court's consideration by persons other than the named plaintiffs, nine individuals lodged global objections to the proposed consent decree.[11]

Brenda Beeton, Dennis Beeton, and James Derr submitted essentially identical global objections to the settlement agreement. In their submissions, the claimants identify approximately a dozen discrete objections:

1. The first objection is that the consent decree's definition of its effective date provides the class members with inadequate notice of relevant deadlines, etc. This objection is without merit, as the Court has issued adequate notice of each of the deadlines in this action, and the Special Master and class counsel have taken care to inform class members of their rights and obligations. The Court presumes that this practice will continue after the Court approves the settlement, with a communication either from the Special Master, class counsel, or both, explaining the extent to which class members and other individuals may appeal the Court's decision and the applicable deadlines.
2. The objectors request the express inclusion in the consent decree's definition of "adverse employment action" the denial of promotion based on participation

[11]Several claimants submitted comments supporting approval of the consent decree.

in a protected activity and the Neal litigation. The language in the consent decree is clear, however, and any perceived lack of specificity certainly does not warrant rejection of the settlement. Denial of promotion is clearly contemplated by the consent decree as adverse action.

3. Third, claimants object to the Special Inspector position being part of the DCDC, suggesting instead that the Court maintain exclusive control over the Special Inspector's office as it has overseen the Special Master. This Court is not inclined, however, to serve perpetually as a microadministrator of the Department of Corrections. The substantial equitable relief provided in the consent decree, most notably in the creation of the Office of the Special Inspector, is a reasonable way to protect against sexual harassment and retaliation at the Department while also returning control of the agency to its proper place.

4. Claimants also object to the Special Inspector's investigators being employees of the DCDC. Plaintiffs would prefer that the Department management bear responsibility for disciplining employees,[12] subject to

[12]This is a legitimate point, but one which the Court believes is better served by the consent decree as proposed than by plaintiffs' suggested changes. Somewhat confusingly, this objection also appears to run counter to the previous objection,

prosecution or contempt findings. Like the position of Special Inspector, the investigators should be DCDC employees (although with some greater degree of independence) mindful of their responsibility for upholding the law. Again, it is not for this Court to perpetually oversee the Department of Corrections.[13]

5. Claimants next suggest that the Special Inspector's investigators should be explicitly made subject to subpoena "for the purposes of any civil action arising out of this Consent Decree." The Court is satisfied that the ordinary rules governing the subpoena of agency investigators will apply equally and adequately to the SI's investigators. Furthermore, it is unclear to the Court what the claimants mean when referring to civil actions "arising" from this consent decree, which actually precludes separate actions arising during the covered time period.

6. Claimants assert that the Special Inspector should be chosen by the Court on recommendation of the parties, rather than by the parties alone. This, however, is a

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which argues for less DCDC involvement in forming and implementing sexual harassment and disciplinary policy.

[13]It goes without saying, however, that the courts will remain available, as always, to enforce the rights of plaintiffs claiming unlawful conduct by the DCDC or any other actor. The Court simply will not act indefinitely as administrator of an agency.

settlement between the parties, and the Court is satisfied that the parties together can be trusted to pick a trustworthy Special Inspector.[14] If they should fail to agree, the consent decree provides that the Court will choose from candidates proposed by the parties, as plaintiffs suggest. The objection, therefore, carries little weight.

7. Claimants object to the maintenance of any sexual harassment training records within the Department, asserting that it should be the Special Inspector's duty to prevent tampering with files. The Special Inspector will adequately ensure the integrity of training files whether they are stored in the physical confines of the OSI or at the Training Academy.

8. The claimants also object to the dissolution of the Court's existing injunctions following the going into effect of the consent decree. However, as the Court has noted above, this settlement agreement properly returns primary responsibility for the prevention of sexual harassment and retaliation to the DCDC, ending the prolonged judicial oversight by this Court. Dissolution of the existing injunctions is a proper and

[14]The parties' decision to name Alan Balaran to be the first Special Inspector reinforces the Court's confidence in this regard.

appropriate term of the agreement.

9. Referring to section III.A of the consent decree, plaintiffs object that claimants are left without relief in the event that the Special Inspector should fail to remedy a claim. While the plaintiffs' reference to section III.A is somewhat unclear, the Court is satisfied that the determinations of the Special Inspector will be subject both to administrative appeal and, if necessary and where appropriate, to review in the local or federal courts.

10. Tenth, the claimants object that "$8 million could not possibly compensate the plaintiffs or individually named claimants in this action." Although the Court understands that monetary compensation can seldom perfectly remedy the harm resulting from sexual harassment or retaliation, the Court finds that $8 million is a reasonable sum and that, taken in conjunction with the broad equitable relief provided by the settlement, the monetary relief is adequate consideration for satisfaction of the class claims. Also, as the Court has noted, settlement necessarily involves compromise, and the parties must be allowed to consider the savings in legal costs and other expenses that would be associated with continued litigation, as well as less tangible benefits to the parties from

resolving this dispute now, rather than after another lengthy trial and lengthy appeals process.

11. Claimants' next contention is that the Special Master should not be permitted to make any recommendation on monetary relief without the approval of the claimant. Such a procedure would, of course, be entirely unworkable. The consent decree provides a limited amount of funds to be distributed to claimants, and the Special Master has done an admirable job of allocating those funds equitably and efficiently. Allowing any claimant to veto the Special Master's decisions would disrupt the entire process.

12. Claimants object to the consent decree's limitations on the equitable relief available to individuals. However, the Court concludes that the equitable relief provided for is reasonable in light of the broad class-wide equitable relief mandated by the consent decree. While plaintiffs rightly complain that some deserving plaintiffs may not be made one hundred percent whole under the settlement agreement, there would of course be no guarantee that the plaintiffs would receive as much as they seek (or as much as they in fact receive under the consent decree) were the case to go to a second trial (and appeal). Under the circumstances, while the Court considers this a legitimate objection,

in isolation it does not come close to undermining the fairness of the agreement as a whole.[15]

13. Finally, claimants object that the deadline for submitting a claim form to the Special Master was too short. The Court is satisfied that a period of forty-five days was sufficient to allow class members to file a claim, and no revision to the deadline is necessary or appropriate.

Another claimant to file objections with some general applicability was James Clark. Claimant Clark filed literally hundreds of pages of documents with the Court over the course of this litigation, most of which related to specific objections to the Special Master's handling of Clark's claims. In that regard, claimant Clark objects to the proposed consent decree insofar as it precludes him from pursuing his claims in a separate lawsuit before a jury. More specifically, Clark objects strenuously and repeatedly to the Special Master having any involvement with his claim, as he believes that the Special Master is biased against him. As this Court has already held in a memorandum order filed May 25, 1999, Clark's objections to the conduct of the Special Master are entirely baseless and form no legitimate foundation

[15]Nor, given the Court's ultimate determination that the consent decree is fair, adequate, and reasonable, does the cumulative weight of this and other legitimate objections persuade the Court that the consent decree should be disapproved.

for disturbing the settlement agreement. Likewise, as in the case of the objecting named plaintiffs, claimant Clark may not opt out of this Rule 23(b)(2) class action to pursue his claims separately. Claimant Clark's objections are rejected.

Several global objections were also submitted by claimant Thyra Griffin. First, claimant Griffin objects to the lack of participation in settlement negotiations available to her and the other plaintiff class members, both named and unnamed. As alluded to above, the Court understands and is sympathetic to claimant's concerns about plaintiff participation in the settlement negotiations, but the Court also notes again that the level of plaintiff participation in this settlement process was not unusually low. To the contrary, class counsel for the plaintiffs did make an effort to include the plaintiff class in its negotiating and decisionmaking process. It is simply a characteristic of class actions (perhaps one that should be evaluated by the drafters of the Federal Rules of Civil Procedure) that settlement negotiations are conducted primarily by class counsel with relatively little direct participation by the class members. Because the Court finds that class counsel has been conscious of this and has acted on behalf of the class as a whole, the Court declines to disapprove the settlement on this basis.

Claimant Griffin's second objection is that, in her perception, the named plaintiffs received more attention, better

representation, and greater monetary awards than she and other unnamed class members received. Without addressing with particularity the extent to which the named plaintiffs receive disparate treatment under the terms of the consent decree, the Court notes that named plaintiffs may be entitled to different, even preferential, treatment compared to unnamed class members. Cf. Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998). Undoubtedly, this allowance is based on a recognition that named plaintiffs bear additional burdens as a consequence of their visibility and symbolic status. This is particularly true in cases such as this one, where the case itself has engendered a tremendous amount of hostility, including retaliation in the form of physical threats and violence and adverse employment actions. The Court feels that, under the circumstances, the consent decree's treatment of the named plaintiffs separately from the other class members is appropriate. While the named plaintiffs were involved more directly in settlement negotiations by class counsel, for example, and have received specifically negotiated awards (as opposed to filing claims with the Special Master), the Court holds that this distinct treatment does not bely any unfairness, inadequacy, or unreasonableness in the settlement agreement.

Claimant Griffin's third and fourth objections were also raised by the Beetons and James Derr. Claimant objects to the Special Master becoming a DCDC employee as Special Inspector, an

objection which the Court addressed above. Ms. Griffin also objects to the size of the monetary settlement, arguing that $8 million is inadequate to compensate the class and should have been rejected, even if that meant proceeding to trial. As the Court has stated above, settlements are a product of compromise, and this agreement is no exception. In the Court's opinion, this consent decree embodies a reasonable combination of monetary relief and extensive equitable relief. It is understandable that some class members might have preferred to proceed to trial with the hope of recovering more than that awarded under the consent decree. Such a strategy, however, would necessarily involve the significant risk of recovering less than that provided for here, along with the considerable expense of further litigation. Under the circumstances, the Court cannot say that the $8 million, in conjunction with the extensive equitable relief awarded, is unfair, inadequate, or unreasonable.

Finally, claimant Griffin objects to the lack of punitive damages in the settlement. In addition to the fact that punitive damages are seldom if ever included in settlement agreements, the defendants have assumed responsibility for the actions of individual DCDC employees in this action. Punitive damages are therefore not available against individual perpetrators.

Claimant Angelia Henderson submitted a number of objections, at least two of which are generally applicable. First, claimant objects to the lack of punitive damages against individual

harassers; however, as just stated, the District of Columbia has assumed the liability of its employees in this action, who therefore may not be subject to individual findings of liability such as punitive damages. Second, claimant objects to the method used for allocating monies among the claimants. As the Court has noted above, the allocation method developed by the Special Master is innovative, efficient, and in the Court's estimation very fair. It will likely serve as a model for other courts in similar cases. At least in the absence of some more specific objection by claimant, the Court is not inclined to invalidate the settlement on this ground.

Claimant Deborah Jones submitted several objections, a number of which are global in nature. First, she argues that the awards made by the Special Master appear too large for some plaintiffs and too small for others. More particularly, she asserts that those female employees who stayed at DCDC, rather than take leave or otherwise remove themselves from the Department, should have been better compensated for the continuous harassment that they faced. The Court finds that the Special Master's method of allocation properly accounts for this insofar as the frequency and severity multipliers account for differing levels of continuing harassment within the covered time period. Second, claimant objects to the procedure by which the Special Master allocated equitable awards in the form of promotions. However, the Court is satisfied with the Special

Master's decisions in this regard, and it appears that he in fact gave due consideration to all complaints regarding denial of promotions. Third, claimant objects to the fact that the defendant has not admitted liability in the settlement agreement, and claims that the Department is therefore still getting away with improper actions. However, refusals to admit liability are typical of settlement agreements, and DCDC's refusal to admit liability is not unusual under the circumstances. As for claimant's related allegations, however, the Court certainly hopes that the Department is making efforts to mend its ways (although the Court is not naive in this respect). To the extent that the Department continues to fail in its obligations to its employees in preventing and punishing harassment and retaliation, the Special Master's protection must suffice until the Office of the Special Inspector is operational. That office, once underway, represents the most realistic possibility of genuine reform in the DCDC. Finally, to the extent that claimant has other less specific objections or questions about the Special Master's allocation methods, suffice it to say that the Court is impressed with the Special Master's efforts and has confidence in the fairness and efficiency of the Special Master's allocation method.

Claimant Edna McManus raised several global objections similar to those raised by others. Like Thyra Griffin, Ms. McManus objected to the lack of participation that she was

permitted by class counsel throughout the litigation and particularly in the negotiations of the consent decree, as well as objecting to the different treatment of the named plaintiffs. As discussed above, the Court finds these objections understandable but ultimately unpersuasive. The generally diminished role of class members is a general feature of class litigation, and the coincident prominence of the named plaintiffs is a logical consequence of this system. Ms. McManus also raised the related objection (raised first by the named plaintiffs) that the consent decree should not be approved because the named plaintiffs did not all agree to it. As noted above, the objections of one, several, or even all named plaintiffs cannot require the Court to disapprove a settlement agreement that is otherwise fair, adequate, and reasonable.

Like plaintiff Griffin and the Beetons, Ms. McManus also objects to the Special Inspector being a DCDC employee. This objection has already been addressed. Finally, Ms. McManus objects to the Special Master's performance. In this regard, the Court will say once again that the Special Master's conduct has been at all times above reproach. Ms. McManus raises no reason to question the Special Master's integrity or the technical execution of his duties.

Finally, claimant Andra Parker also objects to the Special Master's performance. The Court does not credit claimant's general comments that the Special Master has somehow failed to

diligently or competently execute his responsibilities; to the contrary, the Court has on several occasions expressed its satisfaction with the Special Master's performance.

Claimant Parker raises two specific objections, however, with which the Court generally agrees. First, claimant objects to the Special Master's failure to provide a more detailed explanation for the denial of relief in his Allocation of Relief and accompanying report and recommendations. Although given the magnitude of the Special Master's task he can hardly be faulted for focusing his energies as much as possible on those claimants who he found to in fact be entitled to relief, in retrospect the Court recognizes that the denial of relief is (for the claimants involved) an equally important determination. While in many cases a simple and brief explanation such as "claim outside time period" or "missed deadline for filing" is sufficient, in other cases a conclusory statement is not adequate to inform the particular claimant of the reasons for the Special Master's determination. Hopefully, the Special Master's response, filed March 19, 1999, and this opinion should clarify the remaining questions of most claimants.

Claimant Parker also objects to the Special Master's denial of claims by claimant name, instead of by number; claimant states that this unduly impinged on his privacy. Here again, while the Special Master cannot be justly faulted for preferring simpler methods of identification where available, the Court is not

unsympathetic to claimant's concerns. In retrospect, it may have been preferable to assign new claimant numbers to those denied relief, as well as to those awarded relief, to protect claimants' privacy as fully as possible. In any event, however, neither this shortcoming nor the failure to more fully explain the reasons for denial are of such a nature as to call into question the fundamental fairness or reasonableness of the settlement agreement. Consequently, the Court will not disapprove the consent decree on either basis.

2. Individual Objections

Finally, the Court will address each of the particular comments and objections raised by individual class members and other interested persons. The Court would note initially that it is unlikely that any single objection could reveal so fundamental an inequity that the Court would be inclined to reject the entire consent decree as unfair, inadequate, or unreasonable. However, the Court feels that objection-by-objection consideration is appropriate here for at least two reasons. First, the Court wants to reassure all those who submitted oral or written comments and objections that they have been given thorough and deliberate consideration by the Court. Second, as the Court has indicated, each comment or objection is important not only independently but also as it contributes to the cumulative weight of the objections to the consent decree. With these motivations

in mind, the Court will now turn to a seriatim review of the comments and objections timely filed, proceeding by the individual's last name in alphabetical order.

Carol Adams objected to the denial of relief in her case, alleging that she was sexually harassed when another employee made a lewd and unwelcome sexual advance. Although the Court agrees that the conduct alleged by Ms. Adams is offensive and grossly inappropriate, the Court agrees with the Special Master's conclusion (set forth in his responses filed March 19, 1999) that one incident of unwelcome sexual advance does not rise to the level of a hostile work environment. See Faragher v. City of Boca Raton, 118 S. Ct. 2275, 2283 (1998). The Special Master correctly denied Ms. Adams relief.

Oliver Amaechi alleges conduct that was both retaliation for opposition to sexual harassment and also race discrimination. His claims based on conduct prior to March 1, 1995 were dismissed by this Court, however, on July 9, 1996; as a result, he may only recover for retaliation occurring between March 1, 1995 and the class cut-off date of July 22, 1997. Although it is practically impossible to discern from claimant's submission and his comments at the fairness hearing whether he can document instances of retaliation occurring within this time frame, claimant argues forcefully that the documentation supporting his claims is already in the possession of the Special Master. In any event, based on the Special Master's March 19, 1999 responses, and

phrased in the terminology of the Allocation of Relief, the denial of relief to claimant Amaechi reflects a determination by the Special Master that Amaechi failed to establish a nexus between Opposition to Sexual Harassment and Retaliation of greater than zero percent. The Special Master concluded that any adverse action endured by claimant was a result of national origin discrimination or, at most, a result of claimant's status as a "protected person" in this litigation. The latter entitles claimant to the ongoing protection of the Special Master from unlawful adverse action, but it does not entitle claimant to relief under the consent decree--a documented and established opposition to sexual harassment is required.

Zina Anderson objects that the monetary relief allocated to her by the Special Master will be insufficient to cover her medical and living expenses should she be terminated, as proposed by the DCDC. The Court agrees with the Special Master's response that this objection is at the moment too speculative to warrant a revision. Furthermore, claimant's claim is based in large part upon a sexual assault by an inmate in 1991 and the resulting medical expenses and inability to perform some aspects of her employment; because this class action covers only sexual harassment perpetrated by DCDC employees, not inmates, these claims cannot be compensated from this settlement fund. Thus clarified, the Court finds that the Special Master's allocation of relief is just and reasonable compensation for the unwelcome

sexual advances and subsequent retaliatory transfer claimant has suffered at the Department.

Claimant Senora Atakula submitted a comment on February 5, 1999 commending the Special Master for his integrity; she also spoke at the fairness hearing. However, it appears from subsequent (untimely) filings that claimant's initial good will may have been based at least in part on a mistaken perception that she had received a monetary award. Although claimant's subsequent submissions were untimely and may not be considered by the Court, the Court does wish to apologize for any confusion arising from the Special Master's assignment of new claimant numbers for the final allocation of relief. This was done to protect the important privacy interests of those claimants receiving awards, as alluded to above, and was not intended to confuse or mislead anyone.

Claimant Ella Baskin submitted an objection not to the Special Master's monetary award, but solely to the failure to expunge from her records all references to "termination." Upon review, the Special Master agreed with claimant and revised his Report and Recommendation to provide the equitable relief requested by claimant.

Claimant Brenda Beeton, in addition to the global objections discussed above, also claims that she was wrongfully denied monetary relief for sexual harassment and retaliation. After a review of claimant's objections and attachments thereto, the

Court finds no basis for questioning the Special Master's determination, as further explained in his March 19, 1999 response to her objections. The Court is satisfied that claimant received an adequate interview, that the Special Master reviewed her submitted documentation thoroughly, and that the Special Master was reasonable in determining that any adverse actions taken by the DCDC over the years have been in response to unrelated matters and not to any claimed opposition to sexual harassment. Likewise, claimant has not demonstrated that she was subject to sexual harassment within the covered time period. The Court finds that her claim was properly denied.

Dennis Beeton also submitted individual objections in addition to the global objections discussed above. However, claimant makes no allegations of retaliation occurring during the covered time period, and the Court therefore accepts the Special Master's denial of relief.[16]

Claimant LaVern Bess submitted objections arguing that the Special Master had assigned an incorrect severity multiplier for her harm. She also spoke at the fairness hearing. Upon review, the Special Master agreed with claimant and revised his allocation of relief to include the increased severity

[16]At the fairness hearing, claimant did make some allegations of sexual harassment of himself. As explained more fully below with regard to claimant Carlton Butler and others, sexual harassment of male employees is not covered by this class action.

multiplier.

Claimant Cora Black spoke at the fairness hearing and requested that the Court award her at least ninety days of compensated leave time. However, this claim should have been presented to the Special Master within the applicable time period. That time having passed, claimant must now seek the assistance of the Special Master or, shortly, that of the Special Inspector, separately from this action.

Alzeta Bostick failed to file a timely claim, and the Special Master was therefore correct in refusing to consider her claim, even though it may have merit. The Court is keenly aware of the harshness of this result for Ms. Bostick. However, fairness and efficiency require that the Court enforce the deadlines established by court order. Ms. Bostick may have a remedy against her former counsel, who claims to have mailed Ms. Bostick's claim on the deadline date but alleges that the postal service failed to properly collect mail at his building that day. While the Court offers no opinion on whether Ms. Bostick can prove liability, these are precisely the types of circumstances that typically lead to legal malpractice actions, and such recourse may represent Ms. Bostick's only possibility of recovering the relief to which she may have been entitled in this action had she timely filed a claim.

Claimant Dennis Brummel submitted a poetic request that the Court approve the consent decree.

Claimant Lysandra Burnside objected to the Special Master's denial of relief, alleging that she was the victim of sexual harassment between 1984 and 1992. However, Ms. Burnside failed to file a claim in 1995; her pre-1995 claims are therefore barred, and the Special Master correctly denied her relief.

Claimant Henry Bush, in a written submission and at the fairness hearing, objected to the denial of relief in his case, alleging that in addition to age discrimination he was a victim of sexual harassment. However, neither the age discrimination nor the sexual harassment claim falls within the scope of this class action, which covers sexual harassment of women but not of men, as explained below with regard to claimant Carlton Butler. The Special Master, therefore, was correct in denying Mr. Bush relief.

Claimant Carlton Butler articulates a strong case that he was himself a victim of sexual harassment and that he was retaliated against for his opposition to that harassment. While the Court is sympathetic to Mr. Butler's claims, the scope of this class action as intended and understood by the Court from the beginning has been to cover sexual harassment of women and retaliation against those who opposed the sexual harassment of women. This case simply is not about sexual harassment of men or retaliation against those who oppose such harassment. The original class, as certified by the Court, did not include such claims, and they cannot be included now. Claimant Butler and

those others in similar situations may have actionable claims that can be brought separately either in federal court or in the local courts through ordinary procedures. Sexual harassment and related retaliation, be they against men or against women, are illegal and victims should not go without a remedy. However, it is a feature of the judicial system that cases are limited in scope, and one case must resolve the issues in that case, and not attempt to resolve all possible injustices. That said, the Special Master correctly determined that claimant Butler and others similarly situated cannot receive relief in this class action.

Claimant Sylvia Cephas alleges both sexual harassment and retaliation (as well as discrimination based on sexual preference, which is not covered by this class action). The Court finds the Special Master's allocation for sexual harassment to be fair compensation for the comments and one instance of unwanted sexual touching endured by claimant. Although it is more difficult to determine based on the evidence before the Court, the Court also finds that the Special Master did not err in denying claimant relief for retaliation based on her own statement that the negative treatment that she suffered was due solely to discrimination on the basis of her sexual orientation. Although the claimant now takes issue with this characterization, the proper basis for the Special Master's determinations is the information made available to him in the claim summaries and

during the claim interviews. While the Court might be inclined to consider evidence newly discovered since that time if relevant to a claim, a mere changing of story does not warrant a second look from the Special Master or an independent investigation by the Court. The Special Master's determination, therefore, is adopted.

Claimant Patricia Clark objected to the amount of her monetary award, claiming that she should have received more. However, the Court agrees with the Special Master that the unwelcome kisses on the cheek received by claimant were properly considered nonsexual touching, rather than sexual touching, and the Court is satisfied that the Special Master correctly calculated claimant's relief.

Claimant James Clark raised a number of objections in his several written submissions and orally at the fairness hearing, many of which were nearly incomprehensible. Although the Court has had great difficulty in identifying each of claimant's objections, several are apparent. In essence, claimant objects to the Special Master's allocation of relief as inadequate. He claims retaliation including denial of promotion, retaliatory placement on administrative leave, a proposed termination, and a transfer to a less favorable assignment, as well as placing him in dangerous situations while on the job. Significantly, as discussed briefly above in conjunction with claimant's global objections, claimant alleges that the Special Master has been

part and parcel of the retaliation against him, an accusation which the Court finds to be wholly unwarranted and unsubstantiated. Because most of the factual allegations raised by claimant have been considered by this Court many times before in separate filings, and because it is apparent that the Special Master also has considered these allegations thoroughly and thoughtfully, the Court finds no reason to question the Special Master's allocation of monetary relief to claimant.

Although his submission is not entirely clear on this point, claimant James Coley objects to the denial of relief to him for what he alleges was sexual harassment of himself through the promotion of another employee based on that employee's submission to sexual advances. This claim is at most a claim of sexual harassment of a male employee, which as the Court has stated is not covered by the consent decree. Therefore, the Special Master correctly denied claimant monetary relief.[17]

In response to a filing by the defendant, claimant Patricia Commer submitted comments requesting that the Court approve the consent decree and the Special Master's allocation to her.

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[17]At the February 22, 1999 fairness hearing, claimant also objected to the exclusion of many potential class members based on the failure to timely file a claim form, stating that letters distributed by class counsel were ambiguous as to the scope of the class. The Court regrets that some potential class members may have been excluded based on confusion or misunderstanding; however, the notifications ordered disseminated by the Court over the course of this litigation were sufficient to notify class members of their rights and obligations.

Because the Court finds that the defendant has no standing to object to the Special Master's allocation of relief under the terms of the consent decree,[18] and having no reason to question the Special Master's determination, the allocation is adopted.

Claimant Shirlene Countee submitted a request for clarification of the Special Master's allocation as it related to her. Unfortunately, it appears that claimant has mistakenly interpreted the allocation as awarding her substantial monetary relief. This misunderstanding results from the assignment of new claimant numbers for the final allocation of relief, a reassignment which was done to protect the privacy interests of the claimants but which has caused some confusion among the class. Ms. Countee was not awarded relief by the Special Master because he correctly determined that, under the controlling case law, the one incident alleged by Ms. Countee does not rise to the level of a hostile work environment constituting sexual harassment.

Claimant Sidney Davis alleged in his written objections and at the fairness hearing that he was the victim of sexual harassment and retaliation for opposing that harassment. As the Court explained above in relation to Carlton Butler, while the treatment alleged by Mr. Davis may well be unlawful, it is simply not covered by this particular class action, which is limited to

[18]Defendants admitted as much both in their written submissions and at the fairness hearing.

sexual harassment of women and retaliation for opposing the sexual harassment of women. Mr. Davis may seek adjudication of his claims in a separate action or seek relief within the Department (including the Office of the Special Inspector when it is operational), but he may not recover under the terms of this settlement.

Claimant James Derr, in addition to his global objections, submitted a number of individual objections to the Special Master's allocation of relief to him. He also spoke at the February fairness hearing. The Court is satisfied with the Special Master's representation in his March 19, 1999 response that he thoroughly reviewed claimant's submitted documentation and conducted a nonadversarial interview as provided for in the consent decree,[19] as well as returned claimant's documentation. The Court is further persuaded that, as the Special Master determined, any retaliation suffered by claimant was in response to his participation in a lawsuit involving sexual misconduct and female inmates, not in response to any opposition to sexual harassment of female employees.

Claimant Carl Dixon also objected (in writing and at the

[19]"Nonadversarial" is a legal term of art referring to a proceeding conducted without the usual back-and-forth of argument between opposing parties, such as a plaintiff and a defendant. The claim interviews conducted by the Special Master clearly qualify as nonadversarial, even though the Special Master was occasionally obligated to ask pointed questions or seek clarification of inconsistencies.

fairness hearing) to the denial of relief in his case, claiming that he was himself the victim of sexual harassment and retaliation. The Court agrees with the Special Master, however, that claimant may not recover under the consent decree. As explained above, sexual harassment of male employees is not covered by this action. Likewise, retaliation for opposing sexual harassment of a man is not covered. Retaliation claims in the sexual harassment context are "derivative" of the sexual harassment claims. Because only harassment of female employees is covered, only retaliation springing from opposition to such harassment is covered. Claimant alleges no such opposition, other than the suggestion that, subjectively, he sensed that a female coworker was bothered by the atmosphere at work. This sense is simply not enough to entitle claimant to a retaliation award.

Claimant Dorothy Douglas submitted objections on February 11, 1999, as well as fairness hearing comments and objections in written form on February 26, 1999, objecting to the amount of monetary relief recommended by the Special Master. The Court recognizes that claimant alleges some of the most grievous sexual harassment presented to the Court. However, claimant does not dispute that the sexual harassment occurred before the covered time period, which began in April of 1989. Therefore, claimant may not be awarded relief from the funds provided in the settlement agreement. As for financial loss and retaliation, the

Court finds that the Special Master's recommendation is appropriate, based on his finding that claimant's forced retirement resulted from an unrelated physical disability.

Claimant Ernest Durant, Jr., submitted comments expressing satisfaction with the recommended monetary relief and promotion, but asking the Court to consider awarding in-grade step increases to which he believes he is entitled. After a review of claimant's submission and the Special Master's March 19, 1999 response, the Court agrees with the Special Master's recommendation, based on claimant's failure to adequately demonstrate that he was denied in-grade step increases as retaliation and not for another legitimate reason, such as his several years on "leave without pay" status.

Claimant Martin Ezeagu submitted objections requesting increased monetary and equitable relief. However, on review, the Special Master realized that claimant had alleged only sexual harassment of himself and retaliation therefor, conduct not covered by this class action settlement. Therefore, the Special Master has correctly revised his recommendation and denied claimant any relief.

Claimant Joan Farley objects to the denial of relief, alleging that she was sexually harassed and retaliated against. However, Ms. Farley was constructively terminated in 1984, well before the opening of the covered time period. Furthermore, because she was not an employee of the DCDC at any time between

April 1989 and July 1997, she is not a class member and thus may not recover under the consent decree for the alleged failure to rehire and negative recommendations occurring in 1989 and 1991.

Claimant Georgia Mae Green, in a voluminous submission, also objects to the Special Master's recommendation that she receive no relief. The Court finds that the Special Master has correctly responded to Ms. Green's objections in his March 19, 1999 response, which the Court hereby adopts as it relates to Ms. Green. Ms. Green has established no connection between any mistreatment of her and any opposition to sexual harassment during the covered time period, and the majority of her written allegations regard the overhearing of profanity and similar incidents which clearly do not rise to the level of sexual harassment under the law. Similarly, her assertion at the fairness hearing that her subjective perception of a sexually harassing environment is alone enough to support a claim is simply incorrect. See Faragher, 118 S. Ct. at 2283 ("[I]n order to be actionable ..., a sexually objectionable environment must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim did in fact perceive to be so."). The Special Master's denial of relief was correct.

Claimant Jeffrey Lee Griffin submitted objections to the Special Master's recommendation in his case, alleging that he was himself the victim of sexual harassment and retaliation. He also

spoke emotionally at the fairness hearing. As the Court has alluded to above, the Court realizes that so-called same-sex sexual harassment has also been a problem at DCDC, but it is simply not the subject of this lawsuit. Any adjudication of such claims must be made in a separate action or in administrative proceedings; the Special Master was correct in denying claimant relief under the consent decree. As to claimant's other allegations, they are discussed at length in the Special Master's March 19, 1999 responses, and the Court finds no reason to question the Special Master's determination that claimant failed to establish his additional allegations of retaliation. The Court adopts the Special Master's recommendation.

Claimant Thyra Griffin, in addition to the global objections discussed above, submitted a number of individual objections to the Special Master's recommendation as to her award, along with a large volume of attachments for the Court's review. Upon review of claimant's entire submission, as well as the Special Master's Allocation of Relief and March 19, 1999 response to claimant's objection, the Court finds that the Special Master correctly calculated the relief to which claimant is entitled. Although the Court understands that claimant perceives the sexual harassment she suffered to be harmful, a touching of the buttocks is simply not comparable to rape, as claimant suggests. Furthermore, the Court finds nothing unreasonable in the Special Master's determination that claimant failed to demonstrate that

she was entitled to the high-level promotion that she seeks or an increased severity multiplier. In sum, the Court finds that the Special Master's recommendation of relief was wholly appropriate.

In response to a filing by the defendant, claimant Angela Hackney submitted comments requesting that the Court approve the Special Master's recommendation of relief. The Court agrees with claimant and the Special Master, and the recommendation will be adopted without modification.

Claimant Mosette Harmon submitted an objection to the denial of relief based on her claim falling outside of the covered time period. While the Court appreciates and sympathizes with Ms. Harmon's claims, they simply occurred before the covered time period, and therefore it is beyond the power of the Special Master or the Court to award her relief from the funds provided by the consent decree.

Claimant Linwood Harrod submitted a timely objection as well as written fairness hearing comments and objections on February 26, 1999. Mr. Harrod alleges both sexual harassment of himself and retaliation, as well as discrimination on the basis of disability (which is not covered by this case). As explained in connection with various other claimants above, sexual harassment of men is not covered by this class action, which is limited to sexual harassment of female employees and retaliation for opposition to the sexual harassment of female employees. The Special Master was therefore correct in recommending that

claimant not receive an award from this settlement fund.

Claimant Lawrence Hayes submitted an objection to the denial of relief, alleging that he suffered retaliation for opposing the sexual harassment of female inmates and that he missed the filing deadline because DCDC failed to inform him of the deadline while he was on medical leave. Regardless of the filing deadline, claimant cannot recover under the consent decree because this class action is limited to the sexual harassment of female employees and retaliation for opposition thereto. While claimant's opposition to the harassment of female inmates is certainly not a legitimate basis for adverse employment actions against him, that issue is simply not before the Court in this case.

Claimant Patricia Haylock submitted an objection, and spoke at the fairness hearing, regarding the denial of relief based on the findings of the Special Master in a full Report and Recommendation which she states she never received. The Court regrets that claimant never received a copy of the Report and Recommendation, which was filed with this Court on January 22, 1997. A copy of the Report and Recommendation was also served upon class counsel, who should have forwarded a copy to Ms. Haylock. A copy is now available on the public record at this courthouse. In any event, despite the failure to provide claimant with the Report and Recommendation, the Court finds no reason to question the Special Master's determination that

claimant was not retaliated against for opposition to sexual harassment. The Special Master's recommendation will therefore be adopted without modification.[20]

Claimant Angelia Henderson submitted several objections to the Special Master's recommendation in her case, objecting to the absence of an emotional harm award, a retaliation award, punitive damages against her harassers, adequate legal representation, monetary relief for embarrassment, protection from termination, an isolation award, a promotion, lost pay reimbursement, and an award for due process violations (in addition to her general objection to the amount of the settlement and the Special Master's allocation method addressed above). The Court finds that the response of the Special Master, filed March 19, 1999, correctly responds to each of claimant's objections, and the Court hereby adopts that explanation.

Claimant Iva Hinnant submitted an objection asserting that the Special Master had failed to consider certain documentation relating to financial harm. Upon review, and based on the

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[20]At the fairness hearing, claimant also objected to the lack of representation she felt she received from class counsel. The Court is conscious of the difficulties of proceeding without legal assistance. However, class counsel undertook a substantial effort to enlist the aid of other attorneys in representing the large number of class members pursuing individual claims. While certainly a shortcoming in the overall handling of this litigation, the lack of individual representation in the claims process is not a basis for rejecting the proposed consent decree or for revising the Special Master's recommendation in claimant's case.

representation of claimant's counsel that the documents were timely submitted, the Special Master agreed to consider them and revise his recommendation accordingly.

Gladys Howard submitted an objection requesting that the Court include her in the case although she has never filed a claim (she has made numerous other submissions to the Special Master since 1997). She also spoke at the fairness hearing. As Ms. Howard's counsel correctly notes, Ms. Howard's claims do not fall within the covered time period, as they occurred after July 22, 1997. Therefore, she cannot be awarded relief under this consent decree.

Claimant Garnetta Hunt objects to the Special Master's recommendation that she receive no award. However, it appears from claimant's submission that she testified on behalf of a male employee claiming sexual harassment, which the Court has explained above is not covered by this class action; consequently, her derivative retaliation claim is not covered. Therefore, the Special Master's determination was correct, and claimant may not recover under the consent decree.

Claimant Zina Hunter spoke at the fairness hearing and objected to the Special Master's recommendation of relief in her case. However, claimant did not submit a timely objection or notice of intent to appear at the fairness hearing. After careful consideration, the Court concludes that fairness to the other class members and affected individuals requires that

claimant's untimely comments and objections not be considered. The Special Master's recommendation , therefore, will be adopted without revision.

In conjunction with her global objections, claimant Deborah Jones objected to her individual award as insufficient. She spoke forcefully on this point at the fairness hearing February 22, 1999. The Court appreciates claimant's statement that the harm suffered by those female employees who (like claimant) remained at DCDC was long and in many ways comparable to the harm suffered by those who were terminated or otherwise constructively forced out. The Court also agrees that it is necessarily difficult to assign monetary values to one kind of harm as opposed to another. However, the Court feels that the Special Master's allocation method was both reasonable and fair, and this is true in claimant's case as well. The Court accepts the Special Master's recommendation as it relates to claimant.

Claimant Deon Jones submitted an objection to the denial of relief, claiming that the gross retaliation that he alleges resulted, at least in part, from his opposition to sexual harassment. Claimant also spoke at the February fairness hearing, detailing a severe history of harassment and retaliation, leading in turn to severe medical problems. Upon review, however, the Court finds that the Special Master was reasonable in finding that Mr. Jones was targeted for his sexual preference and perhaps also for opposing sexual harassment of

himself, rather than for opposing sexual harassment of women as covered by the consent decree. Therefore, although the Court is sympathetic to Mr. Jones' claims, they are simply not compensable under the consent decree. In response to Mr. Jones' understandable concerns about the preclusive effect of this case, the Court assures him that this case will have preclusive effect only on claims of sexual harassment of female DCDC employees and retaliation for opposition to the same. Any claims for harassment of himself, or for sexual preference discrimination, or for retaliation for opposition to either of those, will not be precluded by this settlement.

Claimant Christopher Lee submitted an objection to the Special Master's recommendation that he receive no award (he also spoke at the fairness hearing). Claimant has submitted no documentation, however, supporting his claim that, in addition to sexual harassment of himself and retaliation for opposition thereto, he suffered retaliation based on his opposition to sexual harassment of female employees. The Court understands from claimant's submission that he was, in a subjective sense, "opposed" to sexual harassment of himself, or women, or anyone. However, opposition to sexual harassment in this case must mean some more concrete action taken in opposition to the sexual harassment of a female employee, such as testifying on her behalf or speaking out to a supervisor or fellow employees. Claimant Lee has not alleged such concrete opposition to the harassment of

female employees, and so the Court agrees with the Special Master's determination that claimant is not entitled to relief under the consent decree.

Claimant Shirley Leonard submitted an objection to the Special Master's denial of relief in her case (and also spoke at the fairness hearing), alleging that she was retaliated against after testifying on behalf of another claimant, Allan Lucas. As will be explained below, the Court will adopt the Special Master's determination that Lucas did not oppose sexual harassment, and thus the Special Master is correct that claimant Leonard cannot be "bootstrapped" to Lucas's claim. However, Ms. Leonard's claim raises a difficult issue in that, by her account, she was subjected to retaliation based on a perception that she opposed sexual harassment through involvement in this litigation, even though claimant's involvement in fact was not opposition to sexual harassment as contemplated by the consent decree. Ultimately, under the consent decree, the availability of relief for retaliation is limited to claimants who have established actual opposition to sexual harassment. The Court's and the Special Master's authorization is likewise constricted. Therefore, the Special Master's recommendation that claimant be denied relief was correct.

Claimant Shirley Lee Leonard submitted comments in support of the Special Master's recommendation of monetary and equitable relief; she also spoke at the February fairness hearing. In his

March 19, 1999 response, the Special Master recommended that claimant repay a prorated portion of her 1995 severance package, calculated from the date on which claimant's reinstatement becomes effective. Upon review, the Court agrees that this is the most equitable result, and the Court will adopt the Special Master's recommendation.

Claimant Verona Lewis submitted objections to the Special Master's denial of relief in her case. Although claimant states that she met all of the deadlines that she was aware of, her claim was dismissed by the Court on July 9, 1996 for failure to respond to the Department's motion to dismiss her claim, thereby barring any claims arising before March of 1995. Because all of claimant's allegations predate March of 1995, the Special Master's recommendation was correct in denying her relief under the consent decree.

Claimant Mazie Lindsey objected to the Special Master's denial of relief, claiming that she was sexually harassed and retaliated against. However, in her submission, claimant raises no evidence in contradiction of the investigative committee's finding that she was not sexually harassed. Her allegations of false rumors and false disciplinary charges do not constitute sexual harassment nor do they appear to relate to any opposition to sexual harassment by claimant. The Special Master's determination is therefore adopted.

Claimant Allan Lucas submitted objections to the Special

Master's recommendation that he receive no relief; he also spoke powerfully at the fairness hearing. Although claimant strongly asserts that he was retaliated against for opposing sexual harassment, a careful reading of his objections and attached documentation supports the Special Master's determination that he did not in fact oppose sexual harassment. The primary incident alleged by claimant was one in which he intervened to protect a female employee from verbal abuse by a male officer, but this verbal abuse does not appear to have been lewd or suggestive or otherwise sexually harassing (although it was offensive). Furthermore, by claimant's own account, the retaliation that he suffered stemmed mostly from a perception among fellow members of the Masonic Order that he violated internal Masonic etiquette by speaking against fellow Masons. Claimant Lucas presents a difficult case for the Court, because the Court does not doubt the sincerity and sense of honor with which claimant defended a fellow (female) employee from treatment that he found inappropriate. Nevertheless, as the Court has explained, this case is limited in its scope to sexual harassment of female employees and retaliation arising from opposition thereto. However honorable a claim may appear to the Court, if it does not fit within this narrow scope the Special Master and the Court are not authorized to grant relief from the funds provided by the consent decree. Therefore, the Special Master was correct in

denying claimant relief.[21]

Claimant Ronald McClain submitted an objection requesting an increased severity multiplier for the harm suffered as a result of retaliation. After review of claimant's objection and the Special Master's March 19, 1999 response, the Court finds no reason to overturn the Special Master's determination that claimant failed to adequately establish that his symptoms worsened as a result of retaliation for opposition to sexual harassment. The Special Master's recommendation will be adopted without modification.

Claimant Eunice Myers submitted an objection to the fact that she was not recommended for an award, alleging that she was the victim of severe sexual harassment, as well as retaliation. However, according to the Special Master, claimant made no such allegations in her claim summary. Unfortunately, the Court is not in a position to accept claims submitted so long after the deadline for filing claims. The practical effect is that claimant will likely be precluded from recovering for the

[21]As explained in a previous section, the fact that claimant was a "protected" person under this Court's injunction does not lead necessarily to the conclusion that he opposed sexual harassment or that he is entitled to relief. The Court understands the confusion of some claimants who received the protection of the Special Master on some occasion but who were subsequently denied relief. However, while it is understandable that these individuals might feel slighted, in fact they are the beneficiaries of the Special Master's slightly broader equitable authority under this Court's orders than under the consent decree.

unlawful treatment she claims to have suffered.

Claimant Deneen Outlaw objected to the Special Master's failure to recommend that she receive an award for sexual harassment and retaliation. Upon review, the Special Master agreed that claimant was incorrectly excluded and has revised his recommendation to include a monetary award for her.

Claimant Andra Parker, in addition to the global objections addressed above, objected to the denial of relief in his case, both by written submission and at the fairness hearing. Although claimant asserts that he provided the Special Master with documentation on several occasions in conjunction with investigations carried out by the Special Master's office, claimant does not contest the Special Master's reason for denying relief, which was that claimant wholly failed to submit any supporting evidence with his claim form. The claim form is barren of even a reference to evidence submitted in another context. Two points must be remembered: First, as explained above, the claim process under the consent decree and the Special Master's authority to investigate complaints and intervene on behalf of "protected" individuals are two conceptually distinct matters. Second, this first issue becomes important because the Special Master, over the course of this litigation, has received and reviewed hundreds of complaints by hundreds of claimants and complainants. An individual claimant simply cannot reasonably expect the Special Master to sort and gather all of the

information and documentation filed in one context to figure out if the claimant may be entitled to relief in the context of the consent decree with no guidance whatsoever from the claimant. Furthermore, the consent decree set forth a firm deadline for the submission of evidence supporting claims for relief under the settlement, and any information submitted after that deadline may not be considered, in addition to the fact that the claimant must necessarily bear the burden of bringing it to the Special Master's attention as information bearing on claims covered by the consent decree. The Special Master's recommendation that claimant not receive an award was reasonable given claimant's failure to provide supporting information properly or at least in a manner making it possible for the Special Master to manageably determine what should be considered in the claim context and what should not.

Claimant Winnifred Pittman submitted an objection to the amount of relief awarded to her. However, the only reason stated in her objection for an increased award is that she was terminated due to absences caused by a medical condition. This situation is unrelated to this case, and therefore the Court finds no reason to question the Special Master's recommendation in claimant's case.

Claimant Josephine Price submitted a request for an explanation of her award. Based on the Special Master's Allocation of Relief, as well as his March 19, 1999 response, it

is apparent that the Special Master credited several allegations by claimant, including frequent incidents of nonsexual touching and retaliation including discharge, other negative personnel actions, and isolation. The Special Master found that the claimant's condition was sufficiently impaired to warrant a severity multiplier of three. However, claimant's award was reduced substantially because the Special Master determined that claimant did not adequately establish that her on-the-job injuries resulted from retaliation for opposition to sexual harassment, because other plausible explanations existed. Based on these findings, the Special Master arrived at his recommended award for claimant.

Claimant Gloria Profit spoke at the fairness hearing, requesting that the Court transfer her away from those who have retaliated against her. This matter, however, is better addressed by the Special Master or the Special Inspector under the broader power that they possess to remedy retaliation; it is not appropriate for relief under the consent decree, as it falls outside the covered time period.

Claimant David Rapelyea submitted an objection to the Special Master's failure to recommend an award in his case; he also spoke, through counsel, at the fairness hearing. Claimant correctly states that the decision in his administrative appeal has no legally binding effect on this Court's decision regarding his claims of retaliation. However, the Special Master's

recommendation was not based on a legal determination. Rather, on the record before him, the Special Master determined that as a matter of fact the termination of claimant was not retaliation for opposition to sexual harassment. The ultimate outcome of claimant's administrative proceedings is not an issue for the Court's consideration, and the Court concludes that the Special Master correctly determined (in the negative) the issue that is before the Court--whether claimant was retaliated against for opposing sexual harassment. The Special Master's recommendation will be adopted without modification.

Claimant Samuel Richardson objected to the denial of relief in his case. However, claimant alleges sexual harassment of himself, which the Court has explained is not covered by this action. Any adjudication of his claims must be made in a separate action or in administrative proceedings.

Claimant Linda Roebuck submitted an objection to the Special Master's allocation in her case. Upon review of claimant's submission, the Special Master's Allocation and Recommendations, and the Special Master's March 19, 1999 response, the Court finds that the Special Master's allocation was reasonable. As explained in the Special Master's March 19, 1999 response, the Special Master adequately considered the various incidents alleged by claimant. The primary reason for the reduction in claimant's award (and herein lies claimant's apparent misunderstanding of the allocation method) is that she failed to

document any causal nexus between her harm and sexual harassment, and that she was not able to demonstrate a connection between her harm and retaliation to the exclusion of other plausible causes. The Court finds that the Special Master's recommendation of relief was reasonable and fair, and it will be adopted without modification.

Claimant Denise Shelton submitted an objection requesting that she receive equitable relief in the form of a promotion. She also spoke at the fairness hearing. Upon review, the Special Master agreed and revised his recommendation to award claimant a promotion.

Claimant Georgette Small submitted an objection requesting an increase in the amount of her award, based in part upon additional medical information. However, after review, the Court agrees with the Special Master that untimely submitted evidence may not be considered in allocating relief. A contrary finding would be unfair to all other claimants who would not receive an equal opportunity to supplement their claim form. The Special Master's recommendation is therefore adopted without modification.

Claimant Charlene Smith submitted an objection to the denial of relief in her case; she also spoke at the fairness hearing. Upon review of her submission, however, the Court finds no basis for rejecting the Special Master's determination that she failed to establish a retaliation claim. The Special Master's denial of

relief, therefore, was reasonable and appropriate.

Claimant John Spann submitted an objection to the Special Master's denial of relief in his case; he also spoke at the fairness hearing. However, as the Special Master correctly notes in his March 19, 1999 response, Mr. Spann failed to submit a notification form in 1995, thus barring any recovery for incidents occurring prior to March 1995. Because Mr. Spann was terminated in February 1995 (i.e., prior to March 1995), he may not recover under the consent decree.

Shedrick Stone spoke at the fairness hearing, requesting relief for retaliation that he alleges to have suffered since testifying on behalf of Alan Lucas. However, Mr. Stone does not appear to have ever filed a claim in this action. Therefore, he may not recover under the consent decree. He may, however, avail himself of the Special Master and (when operational) the Special Inspector if he wishes to pursue these claims.

In response to a filing by the defendant, claimant Denise Thomas submitted a comment recognizing the substantial task of the Special Master and supporting his allocation as fair. The Court agrees. She also expressed a sentiment shared by others--that the perpetrators of sexual harassment and retaliation at the Department should be punished. As the Court has said elsewhere, both at the fairness hearing and in this opinion, the Office of the Special Inspector created by the consent decree will finally provide a mechanism for such disciplinary action.

Claimant Jacqueline Thomas submitted an objection stating that the amount of her award was not satisfactory. She also spoke at the February fairness hearing.[22] Upon review, the Court finds no reason to question the Special Master's allocation in this instance, and it is adopted without modification.

Claimant Ethel Turner-El spoke at the fairness hearing, requesting an increase in her monetary award. While the Court is certainly sympathetic to her situation, she did not demonstrate that the Special Master had erred in allocating her relief. The Special Master's recommendation will be adopted without revision.

Claimant Joyce Webb submitted an objection to the amount of her award. She subsequently spoke at the fairness hearing, asserting that the retaliation at the Department continues and requesting that the settlement contain some provision for punishing those employees who are found to perpetrate sexual harassment and retaliation. Upon review of the first contention, the Special Master agreed with claimant's objection and revised his recommendation accordingly. As to the remaining issues, the Court notes that the newly created Office of the Special

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[22]Claimant, along with several others, stated at the fairness hearing that retaliation at DCDC continues. The Court has taken these comments very seriously, and it is the Court's expectation in approving the consent decree that the equitable relief provided therein will bring long-overdue change to the Department. Insofar as continued retaliation might effect claimant's award, the Court repeats that conduct occurring after July 22, 1997 has no bearing on the awards, as it falls outside of the covered time period.

Inspector will indeed have the power to take disciplinary action against employees who are found to have perpretrated sexual harassment or retaliation. This power to reprimand, transfer, or even terminate harassers and retaliators will hopefully be an impetus toward finally ending the culture of harassment and retaliation at the Department.

Claimant Beverly Williams objected (in writing and at the fairness hearing) to the amount of her award as insufficient given the continued retaliation she alleges at the hands of the DCDC. However, as the Special Master correctly noted in his March 19, 1999 response, actions taken by the Department after July 22, 1997 fall outside of the covered time period and cannot form the basis for an increase in relief under the consent decree. Any claims arising after July 22, 1997 must be addressed in a separate action or in administrative proceedings.

Claimant Yvonne Willis submitted an objection to the Special Master's denial of relief in her case, stating allegations including even harassment by the Special Master. She also spoke briefly at the fairness hearing. Claimant offers no evidence in support of her claims, however, and the Court does not credit her allegations against the Special Master. In addition, claimant's claim was dismissed on July 9, 1996[23] for failure to respond to

[23]The July 9, 1996 order is available to the public in the Clerk's Office for the United States District Court for the District of Columbia, located on the first floor of the United States Courthouse at 333 Constitution Avenue, N.W., Washington,

defendant's motion to dismiss. Her claims arising before March of 1995 are therefore precluded, and the Special Master was correct in denying her relief.

Claimant Jeanette Wood, through counsel, spoke at the fairness hearing in support of the Special Master's recommendation of relief in her case. The Court agrees with claimant that defendants have no standing to object to the Special Master's recommended allocation, and the Court will adopt the Special Master's recommendation without modification.

Finally, claimant Glennor Woodard submitted an objection to the denial of relief, alleging that he was subject to retaliation for assisting female employees to file sexual harassment grievances in his position as union steward. However, claimant does not refute the Special Master's conclusion that claimant failed to submit any evidence in support of his claim summary. The Court finds no reason to overturn the Special Master's finding that claimant failed to prove that he was retaliated against for opposing sexual harassment.

Before concluding its treatment of individual comments and objections, the Court would like to explain again one or two important points. First, this settlement agreement will preclude all future claims that fall within the class definition. That

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is, no female employee of the DCDC may bring any action based on sexual harassment occurring between April 1, 1989 and July 22, 1997. Likewise, no male or female employee of the DCDC may bring an action based on retaliation for opposition to the sexual harassment of female employees occurring between April 4, 1991 and July 22, 1997. All such claims will be forever precluded by this settlement agreement.

However, the flip side of the coin is that this settlement agreement will have no preclusive effect on any other claims. For example, male employees of the Department will not be barred from bringing claims of sexual harassment. Any employee may bring a claim of retaliation for opposition to the sexual harassment of male employees, or of inmates, male or female. Furthermore, claims for the sexual harassment of a female employee are not precluded if the unlawful action occurred either before April 1, 1989 or after July 22, 1997. Likewise, claims of retaliation for opposing the sexual harassment of a female employee are not precluded if the conduct occurred either before April 4, 1991 or after July 22, 1997. Any persons having such claims should be aware that they are not covered by this class action, and that they may therefore be pursued in separate lawsuits or in administrative proceedings, as otherwise provided by law.

A related notion that bears repeating deals with the powers of the new Office of the Special Inspector (OSI). Although the monetary and equitable relief available under the consent decree

is limited to claims falling within the class definition discussed above, the power of the OSI has no similar limitations. As explicitly stated in the consent decree, the Special Inspector will operate within, but largely independent of, the Department. The OSI will have "authority over all sexual harassment and retaliation complaints." Furthermore, the Special Inspector will have "authority to provide such relief to the prevailing complainant as the Director can now order." As these provisions make plain, the OSI will be able to adequately protect DCDC employees suffering from sexual harassment and retaliation, without the narrow limitations imposed by the consent decree on the Special Master's allocation of monetary and equitable relief.

C. Defendants' Objections to the Special Master's Recommendations

Finally, the Court will address several concerns raised by the defendants in their preliminary and first supplemental objections to the recommendations of the Special Master, filed January 26, 1999 and February 1, 1999, respectively.

First, the Court agrees with the defendants' concession that they do not have any standing under the consent decree to challenge the Special Master's individual allocations of monetary relief. In addition, the Court agrees with class counsel that the defendants do not have standing to object at this stage to the Special Master's determinations regarding individual

equitable relief. The settlement agreement vested discretion in the Special Master to make these determinations, and the defendants may not now object to them without withdrawing their recommendation that the Court grant final approval to the proposed consent decree. That said, the defendants do properly raise a few issues.

First, the defendants object to the Special Master's failure to provide particularized findings of fact and law with regard to each claimant for which he recommended a purging of files. However, the Court is satisfied with the Special Master's explanation at page eighteen of the Recommendations of the Special Master Concerning Monetary and Equitable Relief. The purging of disciplinary action is limited to actions occurring prior to July 22, 1997, and it is based on the Special Master's finding in each case that the claimant was improperly disciplined. The Court sees no reason to revise this determination.

Second, the defendants raise concerns regarding the Special Master's failure to more adequately describe the bases for denying relief to claimants. As discussed above, the Court generally agrees with this perceived shortcoming in the Special Master's Recommendations, but the Court feels that the Special Master's March 19, 1999 filing and this opinion adequately redress any shortcoming. Furthermore, defendants' related concerns about the preclusive effect of the Special Master's determinations are without merit. Whether or not a claimant is

granted relief in this case has no impact on the preclusive effect of this settlement agreement. Any and all claims of sexual harassment of a female employee arising between April 1, 1989 and July 22, 1997 are now barred, regardless of whether the claimant recovered in this action, filed a separate lawsuit, or also has claims under separate theories of discrimination. The same is true of any and all claims of retaliation for opposing the sexual harassment of female DCDC employees arising between April 4, 1991 and July 22, 1997. Moreover, just as the claims described above are barred regardless of the allocation of relief in this case, it is equally true that claims falling outside of this narrow definition are not barred, regardless of the allocation of relief in this case.

Insofar as the defendants lodge a general objection to the Special Master's allocation method, the Court is inclined to believe that this too lies outside of defendants' authority to object. However, even if defendants may properly object generally to the method of allocation, the Court has noted many times and will repeat that the Special Master's allocation method is ground-breaking, fair, efficient, and will likely serve as a model in the future for this or other courts faced with the task of allocating class action settlement funds. Defendants have raised no reason to question the Special Master's method.

The Court would also note that, despite the filing of these several objections, the defendants have commended the Special Master for his work in this case. Furthermore, defendants

reasserted at the February fairness hearing that they are in favor of the consent decree and strongly recommend that the Court grant final approval.

III. CONCLUSION

In conclusion, then, the Court finds that the consent decree should, and will, be approved as fair, adequate, and reasonable. The majority of objections received either reflect a misunderstanding of the consent decree and the Special Master's procedures or are otherwise ultimately without merit. Those objections that do have merit, when taken individually or in their cumulative effect, simply are not sufficient to render the settlement agreement reached by the parties unfair, inadequate, or unreasonable. After consideration of all relevant factors, including the possibility of greater (or lesser) success at trial, the costs (emotional as well as economic) of further proceedings, and the combination of monetary and equitable relief provided by the consent decree, the Court finds that the settlement agreement is in the best interests of the plaintiff class and fair and reasonable to all parties. Therefore, the consent decree will be granted final approval today.

The final approval of the settlement marks an important point in the fight against sexual harassment and retaliation at the DCDC. The role of this Court and this litigation is now

largely completed.[24] However, the process of genuine reform has only just begun. It is this Court's hope and expectation that the relief provided for in the consent decree, most notably the creation of the Office of the Special Inspector, will provide a structure within which the Department can achieve true institutional change.

A separate order will issue this date.

_____
Royce C. Lamberth
DATE: United States District Judge

[24]The Court's role is largely--but not totally—completed. For example, according to the consent decree, the Court's injunctions will remain in effect until 60 days from this date or until the Special Inspector certifies to the Court that his Office is operational, whichever occurs later. In addition, the consent decree provides for some future Court involvement if the parties are unable to resolve disputes over alleged breaches of the settlement or the naming of a Special Inspector; the Court may also be called upon to resolve budgetary disputes between the defendants and the Special Inspector. However, the primary responsibility for enforcing laws barring sexual harassment and related retaliation will now lie with the defendants and with the Office of the Special Inspector, rather than with the Court.

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

BESSYE NEAL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	93-2420 (RCL)
DIRECTOR, D.C. DEPARTMENT OF CORRECTIONS, et al.,	)	
	)	
	)	
Defendants.	)	

RECOMMENDATIONS OF THE SPECIAL MASTER CONCERNING MONETARY AND EQUITABLE RELIEF

The Consent Decree in this case, which the Court preliminarily approved on August 28, 1997, establishes a fund of $4.35 million (plus interest) to be distributed to those individuals who filed claims ("Claimants") and to whom the Special Master recommends payment. With interest, the amount subject to distribution is $4,600,000. Exhibit 1 to this report sets forth recommended payments to129 Claimants, ranging from over $204,000 to under $1,700. The average award is approximately $36,000. See Exhibit 16. At the time of distribution, interest accrued in excess of $4,600,000 will be disbursed proportionately among the Claimants. See Exhibit 1.

The purpose of this report is to explain how these recommendations were made. To do this, it is necessary to briefly recapitulate the history of this case; then to set forth the process used to make recommendations; and finally to talk about the numbers themselves.

As should be evident, mathematical precision is not possible in this particular endeavor. Instead the goal is to achieve substantial justice given the finite amount of money available for distribution. The attached awards seek to meet that goal. I recommend that the Court adopt the awards set forth in Exhibit 1.

The Consent Decree also requires the Special Master to make recommendations concerning equitable relief for Claimants (e.g., promotion, reinstatement, expunging of disciplinary records). Recommendations as to promotions and reinstatement are set forth in Exhibit 2, and recommendations of disciplinary actions to be expunged appear in Exhibit 3. I recommend that the Court adopt the equitable relief specified in Exhibits 2 and 3.

In addition to Exhibits 1-3, which set forth my recommendations as to the monetary and equitable relief contemplated by the Consent Decree, a series of other exhibits (Nos. 4-18) is attached to this report. These exhibits contain a wealth of background data relating largely to the recommended monetary awards in Exhibit 1. Later in the report, I will be referring to some of these other exhibits.

I. HISTORY OF THE CASE

Plaintiffs originally filed the complaint in this case in November 1993, accusing the District of Columbia Department of Corrections ("Department") of a pattern of sexual harassment and retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq., and 42 U.S.C. § 1983. In January 1994 plaintiffs filed an amended complaint alleging class-wide violations under F.R.Civ.P. 23. They later moved for class certification. The Court granted the motion and certified the class on December 23, 1994.

Plaintiffs alleged a wide variety of misconduct, including requiring female employees to submit to sexual advances in order to obtain job benefits (or to avoid adverse action); engaging in other offensive activities, ranging from repeated lewd remarks to unwelcome touching to physical assault up to and including rape; and retaliation against those women and men who protested harassment, with penalties running from relatively minor personnel actions (such as reprimand) to

termination, the ultimate employer sanction. It is noteworthy that the Department had been subject to an injunction prohibiting sexual harassment for much of the time period covered by plaintiffs' allegations. Bundy v. Jackson, No. 78-1359 (D.D.C. March 23, 1981).

During the course of the proceedings, it became evident that retaliation was a serious concern. On June 7, 1994 the Court entered a preliminary injunction barring retaliation, and on December 16, 1994 the Court held the Director of the Department in contempt for failing to insure compliance with that injunction. As a result, the Court also entered an order that, among other things, empowered a Special Master to investigate and report on allegations of reprisal. I was the second Special Master appointed; I continue to address allegations of retaliation as mandated by the Court's order.

This case was tried before a jury beginning on March 1, 1995, resulting in a verdict in favor of plaintiffs. That verdict included a finding that defendants had engaged in a pattern or practice of sexual harassment and retaliation in violation of Title VII. Final judgment was entered on August 9, 1995. Defendants appealed, and in August 1996 the Court of Appeals vacated the judgment and remanded the case for a new trial. Bonds v. District of Columbia, 93 F.3d 801 (D.C. Cir. 1996). The Supreme Court denied plaintiffs' request for review, Bonds v. District of Columbia, 117 S.Ct. 2453 (1997), and a second trial date was set for August 1997.

On the eve of trial, the parties agreed to a Consent Decree resolving all matters in dispute. Among other things, the Decree defines who may file a claim and establishes an Office of Special Inspector with authority over all sexual harassment and related retaliation complaints within the Department. The Consent Decree further establishes a mechanism for distributing monetary relief to the Claimants and provides for equitable relief -- including correction of records, promotion

and reinstatement -- to those Claimants deemed to have colorable claims. This report is concerned with the allocation of monetary relief, which is covered in Section IV of the Consent Decree, as well as the equitable relief contemplated by Section V.B.

Although the Court has given the Decree preliminary approval, it will not become effective until it receives the Court's final approval following a fairness hearing. In the meantime, Section IV.E of the Decree charges the Master with responsibility for recommending the allocation of a fund of $4.35 million (plus any accrued interest; see Section IV.D) that has been set aside for victims of sexual harassment and/or retaliation for having opposed harassment. (As noted above, the current fund balance with accrued interest is $4.6 million.) The Master's recommendations will be reviewed by the Court at the fairness hearing. No money will be disbursed until the Court has approved or modified the Master's recommendations, has given the Decree final approval, and any appeals have run their course.

The Special Master is given little guidance concerning allocation, but certain broad principles are apparent. In particular, the Consent Decree contemplates monetary awards for both economic and non-economic loss (i.e., emotional distress), and the process for making determinations among competing Claimants is both non-adversarial and brief, involving only written submissions and 30-minute interviews.

Given both the cap on the total amount of money awarded, as well as the compact procedure for making allocation decisions (as opposed, say, to the full Teamsters hearings required in Hartman v. Duffey, No. 77-2019 (D.D.C.)), it is evident that the Decree aims at providing substantial justice among the Claimants. A chief advantage here is the relative speed and finality associated with this approach. (Again, Hartman, filed in 1977, offers an instructive

contrast.) The important point is that the Decree does not envision anything close to mathematical certainty in the allocation of settlement funds.

II. THE PROCESS USED TO ALLOCATE SETTLEMENT FUNDS

Pursuant to the Consent Decree, Claimants entitled to relief include (1) women who worked for the Department between April 1, 1989 and July 22, 1997 and who were harmed by sexual harassment, and (2) men and women who worked for the Department between April 4, 1991 and July 22, 1997 and who were harmed by retaliation. Consent Decree, Section I.A.1. Those Claimants who filed a Notification Form with the Court in the underlying litigation could base their claim on conduct occurring between these dates. Those who did not submit a Notification Form could seek relief based on conduct occurring only between March 1, 1995 and July 22, 1997. An individual woman could belong to both groups, and many do, although a man could belong only to the second (i.e., harmed by both sexual harassment and retaliation).

Any Claimant could seek monetary relief by submitting a claim form to the Special Master, along with whatever documentation was available, including evidence as to economic loss and emotional distress. A total of 238 individuals submitted claims. The claims themselves varied dramatically in nature, running the full gamut of sexual harassment and cutting a broad swath of allegedly retaliatory activity. All Claimants were invited to 30-minute interviews. Some of the Claimants were represented by counsel, but most were not.

Before the interviews, I reviewed the claims forms and any documentation that was provided. Claimants also were given the opportunity to supplement their submissions, especially as to damages.

Following the interviews, I determined that 109 individuals lacked valid claims, either

because the claim fell outside the claims period, did not allege sexual harassment or opposition thereto (e.g., involved retaliation entirely unrelated to protesting sexual harassment), or was simply not credible. See Exhibit 4. This left a total of 129 Claimants who appeared facially entitled to participate in the monetary distribution, either because they had experienced sexual harassment or retaliation, or both.

At this point, the objective was to allocate $4.6 million among these 129 Claimants. It would have been simplest to have divided the money equally among these individuals, but this would not have been fair. Some Claimants were subjected to misconduct that objectively was more severe than that endured by others (e.g., rape as opposed to lewd comments); some were subjectively more traumatized than others; and the range of economic loss varied, as did the degree of documentation of both misconduct and damage.

To assist my thinking about these issues, I sought technical assistance and advice from the accounting firm of KPMG/Peat Marwick and from Douglas Huron, an experienced employment lawyer with the firm of Heller, Huron, Chertkof, Lerner, Simon & Salzman. An early issue addressed was the division between economic and non-economic loss. As noted above, the Consent Decree contemplates awards for both. As it turned out, total economic damages -- unreduced by any principles of mitigation -- amounted to nearly $2 million. As explained below, however, I determined to consider mitigation to a limited extent; when that was done, the economic losses totaled $1,397,142.86, leaving $3,202,857.15 to be allocated to non-economic loss (emotional distress). See Exhibit 17.

The next step was to figure out how to allocate these two sub-funds among the Claimants. In principle, the idea was to divide the money proportionately, based on the relative severity of

documented harm suffered by each person. That is easier said than done; still, it is possible to move well beyond a pure lottery approach with respect to both economic and non-economic loss.

A. Non-economic Loss (Emotional Distress)

With respect to non-economic loss, the goal was to assign a numerical score to each Claimant, based on the relative severity of sexual harassment and/or retaliation suffered. When that process was complete, all scores were totaled and each Claimant's percentage of the total points was computed (e.g., 1.2%). The same percentage was then applied to the funds set aside for non-economic loss.

Early on, I surveyed virtually all damage awards in EEO cases that had been subjected to appellate review. The objective was to determine whether any common pattern emerged that might offer guidance here. Unfortunately, there was none: the awards varied widely, even for conduct that as reported seemed roughly equivalent. One point, though, was instructive. Contrary to popular belief, there were few staggeringly large jury awards and even fewer that were upheld following review. This confirmed my decision to try to avoid disproportionately large awards for any particular Claimant.

1. Sexual harassment

It appears that virtually every female employee at the Department has been subjected to some form of crude remark on at least a few occasions. In order to constitute actionable harassment, though, the treatment must be "severe or pervasive," Meritor Savings Bank v. Vinson, 477 U.S. 5767 (1986), but is not limited to conduct causing economic harm. Harris v. Forklift Systems, Inc., 5 10 U.S. 17, 21(1993). In its recent decision in Faragher v. City of Boca Raton, 118 S.Ct. 2275 (1998), the Supreme Court focused on the pertinent factors in sexual

harassment analysis by describing its approach in earlier cases:

> We directed courts to determine whether an environment is sufficiently hostile or abusive by 'looking at all the circumstances,' including the 'frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'. . . Most recently, we explained that Title VII does not prohibit 'genuine but innocuous differences in the ways men and women routinely interact with members of the same sex and of the opposite sex.' . . . A recurring point in these opinions is that 'simple teasing' . . . offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.'

118 S.Ct. at 2283 (citations omitted).

In light of these factors, I determined that a Claimant had suffered sexual harassment if she endured one or more of the following (in descending order of severity) from a supervisor, or from a co-worker if management condoned the conduct:

- rape (including any nonconsensual sexual behavior engaged in because of threat or coercion);
- physical contact of a sexual nature or sexually-assaultive behavior (e.g., touching of breasts or buttocks, stalking, exposing oneself);
- non-sexual physical contact (e.g., touching of arm or shoulder);
- sexual attention not involving physical contact (e.g., sexual comments; displaying pornography).

Under the Supreme Court's recent decisions in Faragher and in Burlington Industries, Inc. v. Ellerth, 118 S.Ct. 2257 (1998), the Department would be subject to vicarious liability for any of the conduct catalogued above, unless it could prove a narrow affirmative defense in those

instances in which the conduct did not result in a tangible job detriment. See Faragher at 2292, 93; Ellerth at 2270. One prong of that two-pronged defense is that the employer exercised reasonable care to prevent and promptly correct sexual harassment. Id. Given the negotiated resolution of the underlying litigation, however, such a defense was not asserted here; this means that a woman who proved conduct against the Department such as that specified above is presumptively entitled to some compensation.

To determine a "score" for the sexual harassment suffered by a particular individual, I first had to assign a point value to each of the four categories of harassment set forth above. Both common sense and psychological literature suggest that rape would ordinarily inflict much greater emotional distress than a series of offensive remarks, with sexual and non-sexual touchings falling somewhere in between. Indeed, a comprehensive survey of the degree of stress associated with various types of sexual harassment found that "[t]he most distressing social sexual item, 'rape,' ranked between 'death of a child' and 'death of a spouse' for both men and women -- a finding consistent with the view that rape is a profoundly emotionally distressing experience in the view of most people." Lees Haley, et al., "Sexual Harassment Scale," American Journal of Forensic Psychology, Vol. 12, No. 3 (1994) at 50. For such reasons, I determined that rape should be assigned a point value ten times higher than offensive remarks (i.e., 20 as opposed to two points) -- and also considerably higher than sexual and non-sexual touchings (six and four points, respectively). See Exhibit 6. These relative weights are also consistent with the Lees Haley findings. Id. at 46-49.

In addition to the severity of the misconduct itself, other factors are also important, including the frequency of the harassment; the adequacy of the proof supporting the allegation

(e.g., whether there was any supporting documentation); and the adequacy of the nexus between the sexual harassment and the resulting emotional harm (e.g., whether there were other causes that contributed to the harm). The first factor -- frequency of misconduct -- is concerned with how often the sexual harassment occurred. As noted above, conduct must be "severe or pervasive" to constitute harassment in the first instance. But if there were frequent incidents, I determined that a multiplier of three times the basic point score was appropriate. If the conduct was not only frequent but continuous, a multiplier of five was in order. See Exhibit 8.

For the second factor -- adequacy of proof -- I deducted 25 percent from the basic harassment score if, for example, documentation was missing. Similarly, a Claimant ordinarily must show a connection between the alleged misconduct and any harm suffered. See Enforcement Guidance of the Equal Employment Opportunity Commission on Compensatory and Punitive Damages Available under § 102 of the Civil Rights Act of 1991 (July 14, 1992). Accordingly, if there was adequate documentation of harm, no alternate causes, and a Claimant I deemed to be credible, I did not deduct anything from the score. If documentation was lacking, however, or if there were alternate causes of harm, or if a question of credibility as to the nexus between the sexual harassment and the harm arose, I allowed for deductions in 25 percent increments. See Exhibit 9.

Exhibit 10 shows how sexual harassment scores were calculated for each Claimant. For example, Claimant No. 67 was subjected to myriad instances of harassment, including rape, with a basic point score of 20; sexual touching, with a basic score of 6; non-sexual touching, with a basic score of 4; and hostile comments and environment, with a basic score of 2. The first three types of incidents, while sufficiently severe or pervasive to qualify as sexual harassment, did not occur

with great frequency, so no frequency multiplier was used (more precisely, the multiplier was 1). But the hostile comments directed at Claimant 67 occurred continuously, so a multiplier of 5 was used in connection with those incidents.

When the basic point score for each type of harassment in Column 1 was multiplied by the frequency factor in Column 2, a raw harassment score was computed and set forth in Column 3. The proof as to each of Claimant 67's allegations was fully adequate, so there was no deduction (and 100% is reflected in Column 4). The total harassment score for each incident is then set forth in Column 5. (Claimant 4 on page 1 of Exhibit 10 provides an example of a situation in which the raw harassment score was reduced 25 percent because of problems of proof.)

Returning to Claimant 67 on Exhibit 10, there was an adequate nexus between the harassment and the emotional harm suffered (so 100% is reflected in Column 6), and the raw emotional harm score for each incident is set forth in Column 7. (Again, Claimant 4 provides an example of a situation in which the raw emotional harm score was reduced 25 percent because of concerns about the nexus between sexual harassment and harm.)

Finally, there may be a subjective element to damage. With this in mind, I determined that general symptoms of emotional distress would not be assigned a multiplier, while a severe manifestation such as hospitalization (or other partial impairment) would warrant a multiplier of two, and permanent impairment (including loss of a child) would be given a multiplier of three. See Exhibit 8. Looking once more at Claimant 67 on Exhibit 10, the severity multiplier in Column 8 shows that the emotional harm was especially severe. Column 9 reflects the final point score for each incident, i.e., the final score for emotional harm due to each type of sexual harassment. The Claimant total in bold type in Column 9 is simply the sum of the final emotional

harm scores for each incident of harassment.

Exhibit 10 shows that Claimant 67 accumulated a total score of 120 points for emotional harm due to harassment. This would be added to any points for emotional harm due to retaliation (see below), and the Claimant would have an overall point score for emotional harm. In Claimant 67's case, that total is 165.75. See Exhibit 1. Each Claimant's overall point score was then computed as a percentage of the total points for emotional harm awarded all Claimants; for Claimant 67, this is 5.6088 percent. See Exhibits 14 and 15. The Claimant was then presumptively entitled to that percentage of the $3,202,857 available for emotional harm (i.e., almost $180,000) – plus any money awarded for economic harm (see below). Thus the total award for Claimant 67 -- including over $20,000 in economic loss resulting from a termination (see Exhibit 12) -- is $200,231.86. See Exhibit 1.

2. Retaliation

Determining the validity of a claim of sexual harassment is conceptually a one-step process -- either the objectionable conduct occurred or it did not. With retaliation claims, however, there are three inquiries -- whether "(1) [the employee] engaged in a statutorily protected activity; (2) [] the employer took an adverse personnel action; and (3) [] a causal connection existed between the two" McKenna v. Weinberger, 729 F.2d 783, 790 (D.C. Cir. 1984).

In the present case, the protected activity at issue is limited to opposition to sexual harassment in the Department. That means that other activity protected by EEO laws or by other statutes (e.g., a protest of racial discrimination or of anti-union behavior) would not give rise to a claim of retaliation here.

The second inquiry -- whether the individual was harmed -- will usually be

straightforward, since the challenged conduct will be an adverse personnel action that indisputably occurred. But the third step -- determining whether there is a nexus between the conduct and the protected activity -- may at times be more problematic. Even if it is clear that the Claimant protested harassment and that management knew of it and later disciplined him or her, there may be other factors that might have contributed (e.g., poor attendance or retaliation for some reason apart from opposition to sexual harassment).

To address these concerns, I first organized the types of adverse actions complained of into six categories in descending order of severity:

- discharge (including constructive discharge);
- other adverse action (demotion; lengthy suspension; refusal to hire or promote);
- lesser discipline/negative personnel action (e.g., brief suspension; reprimand; low performance evaluation);
- general harassment/defamation (e.g., public scolding; continuous criticism; monitoring of calls);
- isolation (e.g., delays or denials of routine personnel actions; undesirable work assignments);
- nullification (failure to address complaints).

These categories are consistent with the four stages of retaliation identified in social science literature: nullification, isolation, defamation, and expulsion from the organization. Parmerlee, et al., "Correlates of Whistleblowers' Perceptions of Organizational Retaliation" (March 1982), citing O'Day, "Intimidation Rituals: Reactions to Reform," Journal of Applied Behavioral Science 10: 373 86 (1972). I refined these categories somewhat further to be

consistent with the universe of complaints filed by the Claimants.

As with sexual harassment, I first assigned point values to each category of action, with discharge having the most points -- 10. See Exhibit 7. Again, this is consistent with the finding in Lees Haley, supra, that a firing is viewed by most people as quite distressing, although less so than rape. Second, I decided simply to account for each instance of alleged retaliation -- rather than assigning a frequency multiplier, as was the case with sexual harassment -- since each allegation usually involved a discrete incident.

I next looked at the adequacy of the nexus between opposition to harassment and retaliation, discounting by 25 percent if documentation was lacking and allowing for the possibility of additional discounts in 25 percent increments if there were alternative plausible explanations for the personnel action in dispute or if credibility on the nexus issue was questionable. See Exhibit 9.

When these factors played out, they yielded a raw emotional harm score attributable to retaliation. That raw score was then enhanced by the same severity multiplier used for harassment, yielding a final emotional harm score for each instance of retaliation. The sum of these scores yielded the Claimant's total score for emotional harm due to retaliation. This total is set forth in bold type in Column 7 on Exhibit 11. Page 3 of Exhibit 11 shows how this approach worked for Claimant 67, who received 45.75 points for emotional harm due to retaliation, in addition to her points for emotional harm attributable to sexual harassment.

B. Economic Loss

I sought first to determine the actual economic loss suffered by each Claimant as a result of unfair termination, denial of promotion, suspension without cause, or medical or other

expenses incurred as a result of sexual harassment and/or retaliation. As noted above, total economic loss for all Claimants -- unreduced by any principles of mitigation -- approached $2 million.

In the ordinary single-plaintiff Title VII case, in which there is no cap on back pay and similar economic loss, the plaintiff must exercise "reasonable diligence in finding other suitable employment." Ford Motor Co. v. EEOC, 458 U.S. 219, 231 (1982). But the plaintiff "need not go into another line of work, accept a demotion, or take a demeaning position." Id. And the "claimant's burden is not onerous, and does not require him to be successful in mitigation." Rasimas v. Michigan Department of Mental Health, 714 F.2d 614, 624 (6th Cir. 1983). Finally, the employer bears the burden of proving that a plaintiff has failed to satisfy the duty to mitigate. See Thurman v. Yellow Freight Systems, 90 F.3d 1160,1168-69 (6th Cir. 1996).

In the ordinary case, then, a reduction in a back pay award due to a failure of mitigation must be grounded on affirmative proof by the employer. Given the non-adversarial nature of the allocation process, of course, there could be no such proof here. Still, in light of the finite amount of money to be distributed, the need for rough justice in the allocation, and the undeniable fact that many Claimants who lost jobs at the Department could have worked elsewhere (and many did), I decided to account for mitigation in those instances in which Claimants were terminated. In particular, I employed a formula approach, relying on the same multipliers used to increase the severity of damage awards (see, e.g., Exhibit 10, Column 8). That is, if a Claimant received a severity multiplier of three, indicating permanent impairment, I assumed an inability to work and I imposed no reduction on economic damage. On the other hand, if no multiplier was used (or more precisely, if the multiplier was 1), I assumed that the Claimant could and should have

worked following the termination, so a reduction was appropriate. Even where a court accepts an employer's proof of a failure to mitigate, however, the reduction imposed on economic loss is rarely more than 50 percent. See, e.g., Price Waterhouse v. Hopkins, 737 F.Supp. 1202, 1217 (D.D.C. 1990), aff'd., 920 F.2d 967 (D.C. Cir. 1990) (reducing back pay from some $682,000 to about $371,000). Here, where a formula is being used and conventional proof of a failure of mitigation is necessarily lacking, I determined that the maximum reduction imposed for reasons of mitigation should be 25 percent (where there was no multiplier for severity of harm). And if a Claimant received a multiplier of two -- indicating partial but not permanent impairment -- I assumed that some work would have been possible but that the reduction should be 12.5 percent.

In sum, mitigation was applied only to terminations, and a Claimant could have a mitigation multiplier of 1.00 (signifying no reduction in economic loss and premised on permanent impairment) or .875 (corresponding to a reduction of 12.5 percent) or .750 (reflecting a reduction of 25 percent in those cases in which emotional harm was not unusually severe). When the mitigation multiplier was applied to the actual economic loss associated with the firing, the result was the mitigated loss. Finally, there needed to be a nexus between sexual harassment (or retaliation) and the mitigated loss, and I provided for reductions in 25 percent increments if there were concerns about the nexus (e.g., lack of documentation). See Exhibit 9. Exhibit 13 details the treatment of economic loss for each of the Claimants; Claimant 67 appears on page 3 of Exhibit 13.

III. EQUITABLE RELIEF

Section V.B of the Consent Decree authorizes the Special Master to award non-monetary equitable relief, including correction of records and up to15 reinstatements and 15 promotions, for

Claimants whom I find that "but for sexual harassment or retaliation . . . would have received such promotions or . . . would not have been separated, and who are eligible under the normal rules for such personnel actions." Section V.B.3.

In keeping with the Consent Decree, I submitted the names of 32 Claimants to the Department whom I considered to have colorable claims for being rehired and/or promoted. (Not everyone who received a monetary award related to promotion or termination was on the list of 32, since more individualized determinations, and stronger proof, were required in connection with equitable relief.) The Department subsequently tendered its objections concerning those Claimants it deemed to have failed to meet the criteria set out in the Consent Decree. These Claimants were then given an opportunity to respond to those objections.

In accordance with the Consent Decree and applicable Title VII law, and in consideration of the Claimants' allegations, the Departments' objections and the entire record, I am recommending that seven correctional employees be promoted, seven former correctional employees be rehired and one former correctional employee be rehired and promoted -- i.e., that a total of 15 Claimants be accorded relief by way of promotion and/or reinstatement. See Exhibit 2. It must be noted that some Claimants possessing legitimate claims for rehiring have withdrawn their requests. Similarly, several viable candidates for promotion are no longer with the Department.

In opposing relief for some of these 15 successful Claimants, the Department relied on records of adverse or corrective action. I recommend that all such records be expunged from the Department's files. Finally, for all the Claimants whom I found were improperly disciplined, I recommend that their personnel and/or institutional files be purged of all disciplinary action occurring prior to July 22, 1997. See Exhibit 3.

CONCLUSION

The Special Master's recommendations as to the monetary relief to be awarded in accordance with Section IV.E of the Consent Decree are set forth in Exhibit 1. The Master's recommendations with respect to the equitable relief contemplated by Section V.B are set forth in Exhibits 2 and 3. Finally, recommendations concerning the expunging of certain records relating to the 15 successful Claimants identified in Exhibit 2 are set forth in Section III above.

I ask that the Court adopt these recommendations.

Date: 12 / 22 / 98 s/ Alan Balaran
SPECIAL MASTER

Total Award To Each Claimant In Order By Claimant

Award Pool: $4,600,000
Total Financial Award: $1,416,568
Award Pool Less Total Financial Award: $3,183,432

Claimant	Percent of Total Award	Award
1	0.3638 %	$16,734.28
2	0.4270 %	$19,641.39
3	0.4785 %	$22,011.04
4	4.2115 %	$ 193,728.97
5	0.0799 %	$3,677.55
6	2.3160 %	$106,537.93
7	0.0983 %	$4,521.84
8	1.2380 %	$56,946.66
9	0.4260 %	$19,598.08
10	1.4783%	$67,999.63
11	0.5638 %	$25,935.19
12	0.0693 %	$3,187.48
13	0.2706 %	$12,446.77
14	0.8739 %	$40,198.56
15	1.3370 %	$61.502.69
16	0.1916 %	$8,811.50
17	1.5227 %	$70,044.51
18	0.4233%	$19,471.44
19	0.2194 %	$10,093.69
20	0.0462 %	$2.124.99
21	0.2609 %	$12,000.00
22	3.8066 %	$175,104.15
23	0.5543 %	$25,499.86
24	0.1849 %	$8,507.14
25	0.6193 %	$28.489.79
26	1.0134 %	$46,614.19
27	1.5539 %	$71,477.76
28	0.4192 %	$19,282.24
29	0.3248 %	$14,941.32
30	0.5256 %	$24,179.45
31	1.8282 %	$84,097.37
32	1.0112 %	$46,514.71
33	0.6483 %	$29,821.37
34	0.1793 %	$8,247.31
35	0.4042 %	$18,593.65
36	0.1472 %	$6,773.40
37	0.2026 %	$9,318.77
38	0.2718 %	$12,500.85
39	0.1559 %	$7,171.84
41	0.3986 %	$18,334.56
42	1.1261 %	$51,798.85
43	0.1355 %	$6,234.11
44	0.1588 %	$7,304.65
45	0.0660 %	$3,037.87

Total Award To Each Claimant In Order By Claimant

Award Pool: $4,600,000
Total Financial Award: $1,416,568
Award Pool Less Total Financial Award: $3,183,432

Claimant	Percent of Total Award	Award
46	2.5833 %	$118,833.07
47	0.1213 %	$5,578.09
49	0.6259 %	$28,793.70
50	0.1516 %	$6,972.62
51	0.3961%	$18,219.77
52	0.0924 %	$4,249.98
53	0.1386 %	$6,374.97
54	0.7209 %	$33,161.44
55	0.0520 %	$2,390.61
56	0.6440 %	$29,623.04
57	0.2554 %	$11,747.69
58	0.2541 %	$11,687.44
59	0.3118 %	$14.343.67
60	0.5540 %	$25,485.64
61	0.4504 %	$20,718.64
62	1.8257 %	$83,983.61
63	1.1007 %	$50,634.43
64	0.2388 %	$10.984.62
65	0.2310 %	$10.624.94
66	1.6642 %	$76,554.01
67	4.2761 %	$196.699.02
68	0.0650 %	$2.988.26
69	0.9423 %	$43,347.70
70	2.0234 %	$93,077.86
71	0.3655 %	$16,812.68
72	0.6819 %	$31,369.35
73	0.1790 %	$8.234.33
74	0.2079 %	$9,562.45
75	0.2709 %	$12,461.74
76	0.3004 %	$13,818.04
77	0.6756 %	$31,079.66
78	0.2035 %	$9,363.23
79	0.3952 %	$18,180.90
80	0.2122 %	$9,761.67
81	1.6076 %	$73.947.38
82	0.4677 %	$21,515.51
83	0.9860 %	$45,353.86
84	0.1386 %	$6.374.97
85	0.2097 %	$9,644.89
86	4.3876 %	$201,829.56
87	0.4158 %	$19,124.90
88	0.1983 %	$9,119.58
89	2.0304 %	$93,398.05

Total Award To Each Claimant
In Order By Claimant

Award Pool: $4,600,000
Total Financial Award: $1,416,568
Award Pool Less Total Financial Award: $3,183,432

Claimant	Percent of Total Award	Award
90	0.0346 %	$1,593.74
91	0.6005 %	$27,624.85
92	0.2079 %	$9.562.45
93	0.1213 %.	$5,578.09
94	0.5059 %	$23,270.06
95	0.2830 %	$13,016.42
96	0.5293 %	$24,348.46
97	4.1570 %	$191,222.23
98	0.7136 %	$32,827.42
99	0.8324 %	$38,291.51
100	0.6084%	$27,984.86
101	0.0780 %	$3,585.92
102	1.3004 %	$59,816.63
103	2.4489 %	$112,647.46
104	0.3267 %	$15,030.19
105	0.5088 %	$23,405.23
106	0.4202 %	$19,328.62
107	0.6842 %	$31,473.21
108	0.5261 %	$24,200.11
109	1.7461 %	$80,322.24
110	1.6917 %	$77,819.76
111	0.3597%	$16,548.07
112	0.2607 %	$11,993.07
113	0.2252 %	$10,359.32
114	0.6505 %	$29,921.33
115	0.3854%	$17,729.78
116	1.6826 %	$77.397.53
117	0.7464 %	$34,334.45
118	1.3149 %	$60,486.68
119	0.1386 %	$6,374.97
120	1.2027 %	$55,321.95
121	0.0693 %	$3,187.48
122	1.1239 %	$51,698.55
123	0.0520 %	$2,390.61
124	1.2264 %	$56,415.47
125	1.5296 %	$70,360.34
126	0.1559 %	$7,171.84
127	0.2660 %	$12,236.78
128	0.2656 %	$12,218.68
129	1.6976 %	$78,091.67
130	0.1213 %	$5.578.09
All Claimants	**100.0000%**	**$4,600,000.00**

APPENDIX C

(On hard copy only.)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BESSYE NEAL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action 93-2420 (RCL)
	)	
DIRECTOR, D.C. DEPARTMENT OF CORRECTIONS, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER AND JUDGMENT

Upon consideration of the parties' joint motion for final approval of the proposed consent decree, and for the reasons set forth in the memorandum opinion issued this date, it is the ORDER and JUDGMENT of the Court that:

The parties' joint motion for final approval of the consent decree is GRANTED; and further that

FINAL JUDGMENT is ENTERED, dismissing the action according to the terms of the consent decree.

SO ORDERED.

_____
Royce C. Lamberth
United States District Judge

DATE: